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Research Article

POSSIBILITY TO SUE THE GOVERNMENT'S RESPONSIBILITY TO FULFILL THE ECONOMY, SOCIAL AND CULTURAL RIGHTS

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ABSTRACT

International Covenant on Economic, Social and Cultural Rights 1966, affirms the recognition of human dignity, of equal and inseparable rights from all humanity. This recognition is the basis of freedom, justice and world peace, which must be respected by the State, Government and all humanity. If a country has received and ratified the International Covenant on Economic, Social and Cultural Rights, then it is the obligation and responsibility of the State to implement the provisions in the covenant. Indonesia has become a party to the International Covenant on Economic, Social and Cultural Rights in 1966 through Act No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights, 1966.

The problem of concern is whether the State can be sued before the court, if it fails to carry out its obligations in the International Covenant on Economic, Social and Cultural Rights, 1966. This issue will be discussed by using normative juridical research methods by relying on primary and secondary legal materials.

The results of the study show that, (1) economic, social and cultural rights are part of positive rights whose implementation is the responsibility of the State and the government. However, if it relates to the right to life, placing economic, social and cultural rights as a negative right because it is part of civil and political rights; (2) economic, social and cultural rights as part of positive rights, according to customary law and general law principles cannot be sued before the court; (3) but in development, on the basis of collective agreement contained in the 1987 Limburg Principles and the 1997 Maastricht Guidelines, new doctrines have developed in international human rights law. The state can be sued before the court, if it fails or fails to fulfill the State's obligations in the International Covenant on Economic, Social and Cultural Rights 1966.

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INTRODUCTION

As far as the history of development of human rights, there are three aspects of human existence must be protected or saved, that is human integrity, freedom and equality. The basic law for the achievement of those three aspects is respect to the human dignity.¹ By the United Nations (UN), the respect to the human dignity as the basic law in human rights was implemented by Resolution of 2200A (XXI). General Assembly of the United Nations has accepted three instruments of international human rights. First, the International Covenant on Economy, Social and Cultural Rights, valid from 3 January 1966 (in accordance to Article 27 of the Covenant). Second, the International Covenant on Civil and Political Rights, valid from 23 March

¹ Asbjor Eide (et.al); *Economic, Social and Cultural Rights, A Text Book*. Martinus Nijhoff Publisher, 1995, Pp. 22.

1976 (in accordance to Article 49 of the Covenant). Three, the Optional Protocol of the Covenant on Civil and Political Rights, valid from 23 March 1976.

Basically the International Covenant on Economy, Social and Cultural Rights confirmed that there were some principally points which categorized as the background as well as the goals of establishing the Covenant. First, to record that recognition of inherent dignity on the equality of rights and inseparable from the human beings was the basic of freedom, justice, and world peace. Second, to recognize that those rights were originally from the embedded human dignity. Third, the recognition of being free from fear and deficiency could only be achieved in the situation where all human were guaranteed with their economy, social and cultural rights as well as their civil and political rights. Fourth, to remind nations of their responsibility according to the United Nations Charter to promote and to obey

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the rights and freedom. Fifth, to acknowledge the awareness that each individual had an obligation towards other individuals and their communities, had responsibility to work hard to the progress and the compliance on the recognized rights by the Covenant.²The same affinity could also be obtained from the Covenant Civil and Political Rights 1966.

Indonesia has ratified both of the International Covenants. The International Covenant on Economy, Social and Cultural Right has been ratified to Law No. 1/2005 on Legalization of International Covenant on Economic, Social and Cultural Rights 1966. Meanwhile, the International Covenant on Civil and Political Rights has been ratified to Law No.12/2005 on Legalization on International Covenant on the Civil and Political Rights 1966.

On the other side, Indonesia was also assigned Law No. 39/1999 on Human Rights in which also managed the economy, social, culture as well as civil and political rights. The main framework of the Law assignment was that human rights was the gift from God Almighty so it was necessary to be protected, preserved, and enhanced through the recognition and protection of human rights. The human rights must not be eliminated by anyone, under any circumstances because there is an obligation to respect it.

The International Covenant on Economy, Social and Cultural Rights stated several guarantees, protection and implementation of social and cultural rights as follows. (1) Rights to work (Article 6), which is related to (...). (2) Rights to have a fair and beneficial working condition (Article 7). (3) Rights to union, especially in this case is related to Labor Union (Article 8). (4) Right to have social security (Article 9). (5) Rights to have protection and assistance to the family (Article 10). (6) Rights to have an adequate living standard (Article 11). (7) Rights to have mental and physical health (Article 12). (8) Rights to have education (Article 13 and 14). (9) Rights to have cultural life and knowledge (Article 15)

By ratifying the International Covenant on Economy, Social and Cultural Rights through Law No. 11/2005, the International Covenant on Economy, Social and Cultural Rights has been the (positive) law in Indonesia and has bound the State and each citizen of the Republic of Indonesia. Therefore, the Indonesian Government as the operator of the State is bound to execute the responsibility as the consequences of the obligation of the State as stated in the Covenant of Economy, Social and Cultural Rights.

The International Covenant on Economy, Social and Cultural Rights Year 1966 on Article 2 stated that the State was obligated to (1) take, both individual and international cooperation steps, in order to gradually objectify acknowledged rights in the Covenant with the proper means, included taking the legislative actions (Clause 1); (2) guarantee that the regulated rights in this Covenant would be implemented without any discrimination, such as race, skin colors, gender, languages, religions, political background or other judgement, original nations or social issues, wealth, birth and other status (Clause 2), and (3) develop countries regarding the human and national economic rights by determining on how far the acknowledge economic rights in the Covenant could be

guaranteed for the foreign citizens (Clause 3). The obligation which became the responsibility of the States and its consequences towards the international community under the instruments of human rights were expected to be implemented in the good deed.³

Based on Article 2, the International Covenant on Economy, Social and Cultral Rights, the economy, social and cultural rights could only fulfilled only if there was a state intervention. It is important due to the fact that economy, social and cultural rights are the positive rights which only could be fulfilled if there was a state responsibility. If there was no state intervention or the state was not actively involved, the fulfillment of those rights could not be optimal. The problem occurred in this context and became the main issue in this study is that whether the State could be sued in front of the court of justice if it did not fulfill the obligation to implement the economy, social and cultural rights?

This study was conducted using normative jurisdiction research method which relied in the primary and secondary law materials.

DISCUSSION

Economy, Social and Cultral Rights in the International Human Rights

The economy, social and cultral rights along with the civil and political rights are the basic part in the international human rights and have been established simultaneously in 1966. Therefore, the International Covenant on Economy, Social and Cultural Rights as well as the Covenant on Civil and Political Rights could be categorized as the "hard law" of the International Human Rights Law, asides from other international conventions. In this context, both of the covenants could be assigned as a part of the international bill of human rights. Therefore, the position of economy, social and cultural rights is very important in the international human rights' law.⁴ The International Covenant on Economy, Social and Cultural Rights and the Covenant of Civil and Political Rights become the reference for nations in order to achieve collectively the enhance of economy, social and cultural as well as the protection and the advancement of civil and political rights. The bound on economy, social and cultural rights as well as civil and political rights would be materialized by making those rights positive in form of multi-lateral treaty so it would bound the nations. Both of the covenants were born at the same time as a compromise of contradiction on the formulation where the makers put an effort to formulate an international bill of human rights, which covered both of the categories and not separating them into two covenants. Due to the political contradiction at that time which was in the era of Cold War, the two categories were separated into two coventans.⁵

³. Asbjorn Eide, op.cit., pp. 21.

⁴. Ifdal Kasim; Enhancing Advocation on Economy, Social and Cultural Rights; Material on Human Rights Course for Lawyers Class VI; Jakarta, 29 October-10 November 2011, ELSAM, Jakarta.

⁵. Buergenthal, Thomas; Internasional Human Rights in A Nutshell; West Publishing, Co., 1995, pp. 11.

². Compare to the Covenant Introduction.

In fact, perception (point of view) to start the dichotomy on economy, social and cultural rights on one side and civil and political rights on the other side occurred. The dichotomy took place due to the fact that both rights were contrasted diametrically. The economy, social and cultural rights were described merely as a political statement, while civil and political rights were stated as a real right.⁶ That fact happened because both categories of rights were managed in each covenant using different law formulations. In the Covenant of Economy, Social and Cultural Rights, the formulation used was "... undertakes to take steps, ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant ..." (Article 2 Clause 1). Meanwhile in the Covenant of Civil and Political Rights, the formulation used was "... undertakes to respect and to ensure to all individual within its territory and subject to its jurisdiction the rights recognized in the present Covenant ..." (Article 2 Clause 1).

The law formulation in relation to states' commitment as the implementers of both covenants were different. On the Covenant of Economy, Social and Cultural Rights, the State had commitment to take necessary steps as long as there was resources available. Meanwhile on the Covenant on Civil and Political Rights, the State had commitment to respect and guarantee the acknowledged rights. In this context, the different law formulation became the base to draw a sharp dividing line between both covenants. The sharp dividing was by mentioning that economy, social and cultural rights were the positive rights, while the civil and political rights were stated as negative rights.⁷ It was said as positive rights due to the realization of those acknowledged rights in the Covenant required a major involvement of the State. In this case, the State should actively be charged. On the contrary, it was said as negative rights because the State must stay abstained or did not act in order to realize the acknowledged rights in the Covenant. Here the State must be passively charged.⁸ (Ifdal Kasim, 2001a : xi). In the practical context, the negative rights were formulated in "freedom from", while the positive rights were formulated in "right to". Both categories of rights required a different responsibility from the States. In economy, social and cultural rights, the states' responsibility was perceived as "obligations of result", borrowing a term used in the International Law Commission, while on civil and political rights required a states' responsibility in form of "obligations of conduct". As the positive rights, the economy, social and cultural rights could not be sued in front of the court of justice (non-justiciable). Conversely, the civil and political rights as the negative rights could be sued in the court of justice.

Aside from differentiating the positive and negative rights, there was also an ideology distinction. The economy, social and cultural rights were assumed to be ideologically charged, while the civil and political rights were non-ideologically

charged. So it means that economy, social and cultural rights could be implemented on a certain economy system. Furthermore, the civil and political rights could be implemented in all economy system and any government, or as Philip Alston and Gerald Quinn⁹ (1987) mentioned as below.

"... civil and political rights are seen as essentially non-ideological in nature and are potentially compatible with most system of government. By contrast, economic, social and cultural rights are often perceived to be of a deeply ideological nature, to necessitate an unacceptable degree of intervention in the domestic affairs of states, and to be inherently incompatible with a free market economy".

Based on the discussion previously, the perception in the Covenant on Economy, Social and Cultural Rights which was dichotomized to the Covenant of Civil and Political Rights could be summarized in a table as follows.

Table 1 The Classification of Covenant of Economy, Social and Cultural Rights, and the Covenant of Civil and Political Rights

Covenant of Economy, Social and Cultural Rights	Covenant of Civil and Political Rights
Achieved gradually	Achieved immediately
The State was active	The State was passive
Could not be brought to justice	Could be brought to justice
Depended on the resources	Not depended on the resources
Ideologically charged	Non-ideologically charged

Source: van Hoof (1984); Vierdag (1978) and Ifdal Kasim 2001.

Based in the emphasizing on the classification as described in the above table, the economy, social and cultural rights could not be put to justice. If the matter was accepted in the context of individual rights, the answer for the matter was clear. However, the economy, social and cultural rights should be seen also in the context of a community. If a community in an isolated island could not benefit education due to the negligence of the government or due to the policy of the government, was it not able to be put to the court?

The Economy, Social and Cultural Rights as a Part of Civil and Political Rights

Basically the economy, social and cultural rights is inseparable from the civil and political rights. In this context, either the economy, social and cultural rights or civil and political rights is a unity of human rights. Therefore, the economy, social and cultural rights are always forgotten in the human rights advocacy. The international human rights organizations, such as International Amnesty or Human Rights Watch, hold a major role in leading the human rights advocacy's movement to pursue the civil and political rights.¹⁰

In the context whether the State could be put in front of the court of justice, according to Jack Donnely, the context of enforcement of economy, social and cultural rights was put in the indivisibility perspective, that was putting the economy, social and cultural rights in the relation to the civil and political

⁶. Ifdal Kasim; Civil and Political Rights; Study Institute and Community Advocation (Lembaga Studi dan Advokasi Masyarakat/ELSAM); Jakarta 2001a, pp. 4.

⁷. Vierdag; The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights; Netherlands Yearbook of International Law; 1978; pp. 69.

⁸. Ifdal Kasim, op.cit., 2011a, pp. xi.

⁹. Philip Alston dan Gerald Quinn; The Nature and Scope of State Parties Obligations Under The International Covenant on Economic, Social and Cultural Rights; Human Rights Quarterly, No. 2/Vol. 9 May 1987, pp. 2.

¹⁰. Christ Jochnick; A New Generation of Human Rights Activism, Human Rights Dialogue; Carnegie Council, 1997

rights.¹¹For an example, the economy, social and cultural rights, such as the rights to obtain mental and physical health, should be put in the context of the rights to life, to have a wholeness of physics and freedom, as the part of civil and political rights. It was an important matter because according to Yoram Distein (Ifdal Kasim, 2001a: 128), the human rights was meant to enhance and protect the dignity and the wholeness of human individually. If there was any rights more fundamental compared to other rights in order to achieve the goals, naturally it was the right to life, and have a wholeness of physics and freedom. On these three rights, all other rights were dependent because without these three rights, the other rights had less meaning or meaningless.

According to Article 6 the Covenant on Civil and Political Rights, "all human deserve the right to life which is attached in oneself. This right is mandatory to be protected by the law. No one shall be deprived of his right of life arbitrarily". The right to life is the rights which is attached to the existence of human being. This right to life shall never be doubted and is the most important right among other human rights. A civilized society could not exist without the law protection toward life and human life. Unbreakable rights or sanctity of life is the basic value of the modern civilization. In a final analysis, Yoram Dinstein¹² stated that if there was no right to life, there was no basic issue in the human rights.

The State negligence to fulfill the rights to work, the rights to have social security, the rights to have a living standard, the rights to have physical and mental health as a part of the economy, social and cultural rights could lead to the disrupt of life and human life so it could be categorized as the violation of rights to life which is the civil and political rights. In this context, due to the human rights and the basic freedom are inseparable and interdependent, the same attention and the urgent considerations should be given to the implementation, promotion and protection to the civil and political rights as well as the economy, social and cultural rights (Limburg Principles, 1987).

The State could be classified as conducting a violation of the Covenant of Economy, Social and Cultural Rights if (1) failed to take mandatory steps according the provision in the covenant; (2) failed to immediately eliminate the obstacles which the State is obligated to eliminate in order to authorize the immediate implementation of certain right; (3) failed to immediately implement the rights obligated by the Covenant; (4) on purpose failed to fulfill the general achievement standard, which could be accepted internationally, and under its power to fulfill; (5) implemented the limitation on certain rights acknowledge in the Covenant other than already stated in the Covenant; (6) on purpose delayed or discontinued the gradual realization of certain rights, unless if it was conducted by a permitted limitation by the Covenant or the State due to less resources available or force majeure; (7) failed to propose a required report based on the Covenant(Limburg Principles,1987).

The violation towards the economy, social and cultural rights as stated in Limburg Principles 1987 was more emphasized in

Maastricht Guidelines 1997. In Maastricht Guidelines 1997, it was stated that the same as the civil and political rights, the economy, social and cultural rights put the burden of three different types of obligation to the states: the obligation to respect, to protect and to implement. The failure in conducting one of those obligations would be the violation of economy, social and cultural rights.

First, the obligation to *respect* had required the state to restrict itself from interfere the implementation of economy, social and cultural rights. Therefore the right to have an estate was violated when the state was involved in the arbitrary forced evictions. Second, the obligation to protect had required the state to prevent the violation of those rights by the third party. So the failure to ensure that private businessmen had fulfilled the basic labor standard could mean a violation on the right to work or the right to have a fair and pleasant working condition. Third, the obligation to implement had required the state to take legislative, administrative, budgeting, law and other adequate actions to fully implement the rights. So the failure of state to provide the basic health service to those who needed it would mean a violation (Maastricht Guidelines, 1997).

Basically Limburg Principles 1987 and Maastricht Guidelines 1997 are an effort to enhance the economy, social and cultural rights. Limburg Principles 1987 and Maastricht Guidelines 1997 were formulated by the international law experts as an effort to make the implementation of economy, social and cultural rights effective by providing a new interpretation on the regulation of the Covenant on Economy, Social and Cultural Rights. The principles and guidelines above were not legally bound. However, the principles and guidelines were expected to be the guide in monitoring the violations of economy, social and cultural rights.

Limburg Principles and Maastricht Guidelines are basically stated that the economy, social and cultural rights are not fully the positive rights. It is due to the fact that there are so many rights included which require the state to not take any actions (state abstention) in order to protect those rights. This could be seen in the clauses, as the rights to union, the rights to strike, the freedom to choose schools, the freedom to do research, the restriction to employ children in the dangerous jobs, etc. which included in the Covenant of Economy, Social and Cultural Rights. Those regulations are clearly presented that the Covenant of Economy, Social and Cultural Rights was not only managing the rights in form of "rights to", but also rights in form of "freedom from" (Ifdal Kasim, 2001: 8). Therefore the economy, social and cultural rights are not merely the positive rights, but also the negative rights.

The economy, social and cultural rights are a part of negative rights which require the state to conduct the respect, the enhancement, the protection and the enforcement responsibly. If the state were not conducting the respect, the enhancement, the protection and the enforcement of those rights, the state could be sued in court and were required to be responsible in the context of law. This is an important issue regarding that the respect and the enhancement of economy, social and cultural rights are directly related to the rights to life as a part of civil and political rights. The violation of those rights could be categorized the gross violation of human rights.

¹¹. In Ifdal Kasim dan Johanis Da Masenus Arus; Economy, Social and Cultural Rights; ELSAM 2001; pp. 15

¹². Ifdal Kasim, *ibid*, pp. 29.

The State's Responsibility

The state's responsibility is an important part in the international law. The background of the state's responsibility in the international law is that there was no state could enjoy the rights without respecting other states' rights or the obligations required by the international law. According to Malcolm N. Shaw,¹³ the important characteristics of the state's responsibility are depending on factors: (1) the existence of international law obligation which applied between two countries or more; (2) the existence of an action or negligence that violated the international law which resulted in the state's responsibility; (3) the existence of damage or lost as an effect of an violation of negligence of law.

Basically the international law provide the solid base to effectively punish the perpetrators who violated the gross violation of human rights which categorized in the criminal and civil liability. The obligation of the state to punish the perpetrators who violated the gross violation of human rights has been developed into several human rights law instruments. In fact, the international habitual rights have firmly restricted all kind of liberation from all forms of punishment towards the gross violation of human rights which conducted systematically.¹⁴

According to the concept of state's responsibility, a state is responsible if there is a violation of obligation based on the international law. The International Law Commission later stated that the violation towards human rights was also categorized as the international crimes. The accountability based on criminal and civil liability towards the gross violation of human rights possesses the same logical framework that is to give a heavy warning to be known widely that the violation of human rights has a serious law effects. That warning is assigned to those potential parties who would violate the human rights. Asides of that, this accountability is addresses to assist the effort to rehabilitate the victims. Even though the framework was clearly in the criminal accountability, the punishment to the perpetrators would assist the rehabilitation of victims' dignity.

However, the base and goals of both accountability system are different. The punishment to the perpetrators of human rights violation was based on one of the criminal law's functions, namely as the prevention function (deterrence rationale). So the international law had required the states to bring the crime against humanity's perpetrators to court due to the fact that it was considered as the most effective way so that the crime would not be repeated. On the contrary, the failure to punish the perpetrators of violation towards human's dignity would be assumed as the "license" to repeat the gross violation of human rights which categorized as the crime againts humanity. The obligation of the state to punish the perpetrators of this crime was more as the obligation to the society, even more to the

wholeness of international society (*erga omnes obligation*) compared to the individual obligations.¹⁵

In the context of economy, social and cultural rights, the states are responsible to punish the perpetrators of violations of economy, social and cultural rights. In Maastricht Guidelines 1997, it was stated that "the obligations to protect covered the state's responsibility to ensure that private parties or individuals, including the transnational companies with the jurisdiction, not to negate the individuals' rights on economy, social and cultural. The states are responsible to the violation towards the economy, social and cultural rights which occurred in the implementation of a strict monitoring on the behavior of non-state actors".

In another part, Maastricht Guidelines 1997 also stated that "States must develop the effective actions to negate the possibilities of impunity towards each violation of economy, social and cultural rights, and also to guarantee that no one who possible to be responsible towards the violation of those rights possessed the immunity to take responsibility over their actions".

Furthermore it was stated that if the state was failed to fulfill the minimal basic obligation to ensure the fulfillment of that rights, at least the minimal essential level of each rights must be fulfilled. For an example, one of the states with a large number of population could not provide the basic needs, the essential health care, protection and estate, or basic education, etc. By the Committee of Economy, Social and Cultural Rights, it was considered as the gross violation of human rights (General Comment No. 39 Economic, Social and Cultural Rights Commitee, UN Doc.E/1991/23).

Even though the criminal accountability also included the prevention function, the emphasis was in the sake of the victims that was to replace the lost the victims had suffered. The compensation could be in form of money, but it could be in other form based on the special requirements or the urgent needs of the victims, such as providing employment to a victim whose rights to work was taken away because was assumed to be the political opponent of the regime in power. Another example was that a victim of torture was given a health care with the cost of the state. In the case of *Estrella v. Uruguay*, the Committee of Human Rights (in this matter, torture) provided an effective remedy, included the compensation payment to the victim and guarantee that in the future the same violation would never took place anymore.¹⁶

Basically the states must protect the human rights effectively (including the economy, social and cultural rights) through several monitoring mechanism, complaint towards the violations must be investigated effectively by the authority, guilty people must be responsible for their actions, and victims of the violations must be provided the effective remedy, which included the compensation.

In Maastricht Guidelines 1997, it was stated that various violations of economy, social and cultural rights could be accounted based on civil law. First, the violation of economy, social cultural rights could happen through a direct action of the state or other party which was not managed adequately by

¹⁵. Rudy Rizki; *ibid*, pp 3.

¹⁶. Rudy Rizki; *Ibid*; pp. 4.

¹³. MALCOLM N. SHAW, *INTERNATIONAL LAW*; Butterworths, London, 1986; pp. 174.

¹⁴. Rudy Rizki; *The State's Responsibility toward the Gross Violation of Human Rights*; Paper presented in Workshop of Humanity Law and Human Rights; in cooperation of Faculty of Law UNSRAT and ICRC; Manado 1999, pp. 2.

the state that covered (1) the formal elimination or the delay of an important law needed to the progress of fulfillment of economy, social and cultural rights which recently enjoyed; (2) the active denial of that rights for certain individual or communities, whether through discrimination based on the law or by force; (3) the active support on the action taken by the third party which was not in accordance with the economy, social and cultural rights; (4) the implementation of law or policies that were clearly not in accordance with the existed law obligation which related to these rights, unless if it was done under the purpose and goal to increase the equality and improvement of implementation of economy, social and cultural rights for the vulnerable groups; (5) the implementation of retroactive actions in purpose to decrease the level in which each right was guaranteed; (6) the calculated obstacles or the termination of the gradually implementation progress of the rights protected by the Covenant, unless if the state acted in the permitted limit by the Covenant or the state to act accordingly due to the lack of resources or force majeure; (7) the reduction or the transfer of public expenditure, especially when the reduction of transfer resulted the not fulfilling of the rights and was not accompanied with a proper action to guarantee the minimal income for each citizen.

Furthermore, in Maastricht Guidelines 1997, the violation of economy, social and cultural rights could also occur through the negligence or the failure of states in taking further and necessary actions based on law obligations. The violations in this context would include (1) the failure to take proper action as required by the Covenant; (2) the failure to change or revoke the law that clearly not in accordance with the obligation of the Covenant; (3) the failure to implement the law or policies that formulated to implement the regulation in the Covenant; (4) the failure to manage activities of individuals or groups to prevent them from violating the economy, social and cultural rights; (5) the failure to use the available resources in maximally to the fully implementation of this Covenant; (6) the failure to monitor the implementation of economy, social and cultural rights, included the development and implementation of criteria and indicators to assess the obedience on the implementation; (7) the failure to eliminate immediately the obstacles which the state was obligated to eliminate so the rights guarantee by the Covenant could be fulfilled immediately; (8) the failure to implement without any further delay, the rights that obligated by the Covenant to be immediately implemented; (9) the failure to fulfill the minimal standard of achievement to be excepted in general by the international world which under the power of the state to fulfill; (10) the failure to calculate the international law obligations in economy, social and cultural rights when there was a bilateral or multilateral treaties with other countries, international organizations or multinational companies.

Based on the clauses in Maastricht Guidelines 1997 and Limburg Principle 1987, the phrases "undertakes to take steps", "to achieve progressively" and "to maximum of its available resources" and also in Article 2 Clause (1) the Covenant of Economy, Social and Cultural Rights must be addressed as clauses with a dynamic relation to all other articles. The nature of law obligation that occurred from this article was not just to push the State to actively involve, but to make the State not to take any action (being passive). In this context, the State's responsibility in economy, social and cultural rights' sector

could not be distinguished between the obligation to conduct and obligation of result. Both of the obligations must be carried by the State in the implementation of economy, social and cultural rights. For an example, to fulfill the needs of food, the State must take proper measures and policies so that the goal to fulfill the needs of food would be achieved (obligation of result). However, at the same time, the State is not allowed to take actions that would cause someone losing his freedom to choose between working or going to school (obligation of conduct).

CONCLUSION

Based on the International Covenant on Economy, Social and Cultural Rights 1966 as it has been ratified by Indonesian Government in Law No. 11/2005 regarding Legalization of International Covenant on Economy, Social and Cultural Rights 1966 the State could not be sued to court when it could not fulfill the obligation based in the clauses in the Covenant. This fact was based on the outlook that the economy, social and cultural rights were the positive rights which required the State to take a part in the implementation, while the civil and political rights were the negative rights which did not required the State's interference.

However, the development nowadays shows that based on Limburg Principles 1987 and Maastricht Guidelines 1997, all the international law experts who attended the meeting provided their overview of the implementation of economy, social and cultural rights. In both of the document, the States could be accountable for the failures or negligence in the implementation of economy, social and cultural rights. The basic for that are as follows. (1) The economy, social and cultural rights as stated in the Covenant of Economy, Social and Cultural Rights was an inseparable part from civil and political rights as regulated in the Covenant of Civil and Political Rights. (2) Rights, such as tyhe rights to union, especially in relation to the labor union, was classified as negative rights. (3) Rights to work, rights to have social security, rights to have an adequate living standar, rights to have physical and mental health were a part of the roghts to life which was the civil and political rights. In this context, the violation on these rights by the States would be given law implications that the States could be accountable to those acts in the court of justice.

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