IMPLEMENTATION OF LEGAL GUARANTEES FOR HUMAN RIGHTS PROTECTION IN INDONESIA

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ABSTRACT

Objective: Ratifying Human Rights conventions are expected to strengthen the guarantee of Human Rights protection in Indonesia. Human Rights and Act Number 26 of 2000 concerning Human Rights Courts, Indonesia has shown increased involvement in participating as a party to various international agreements in the field of Human Rights. However, the dynamics of human rights law in Indonesia have not progressed since the 1988 reform marked by various existing human rights violations. This research refers to this tendency which slowly erodes the democratic quality of fundamental freedoms. Initially based on the principle of “freedom from fear,” human rights have changed to “fear of freedom.” So there needs to be continuity between law and politics toward human rights.

Method: The research method used is a normative legal approach with qualitative analysis. The data obtained includes first-level legal, tributary, and third-level legal sources.

Result: The implementation of human rights law protection in Indonesia after the formation of Law Number 39 of 1999 concerning Human Rights has experienced ups and downs, which cannot be separated from law enforcement caused by several factors. Human Rights require judicial independence and the rule of law. The problem of upholding human rights and the rule of law in Indonesia involves a degraded legal system and other systems that have significant influence, such as the political, economic, and social systems.

Suggestions: It is necessary to reexamine the Government's legal and political policies regarding upholding Human Rights in Indonesia, with a focus on studying the legal and political aspects of Human Rights to Act Number 39 of 1999 concerning Human Rights.

Keywords: law, Human Rights, implementation, protection.
IMPLEMENTAÇÃO DE GARANTIAS LEGAIS PARA A PROTEÇÃO DOS DIREITOS HUMANOS NA INDONÉSIA

RESUMO

Objetivo: Ratificar as convenções relativas aos direitos humanos deverá reforçar a garantia da proteção dos direitos humanos na Indonésia. Direitos Humanos e Lei Número 26 de 2000 relativa aos Tribunais de Direitos Humanos, a Indonésia tem demonstrado um maior envolvimento na participação como parte em vários acordos internacionais no campo dos Direitos Humanos. No entanto, a dinâmica da legislação de direitos humanos na Indonésia não progrediu desde a reforma de 1988, marcada por várias violações de direitos humanos existentes. Esta investigação refere-se a esta tendência que lentamente prejudica a qualidade democrática das liberdades fundamentais. Inicialmente baseados no princípio da "liberdade de viver sem medo", os direitos humanos mudaram para o "medo da liberdade". Portanto, é preciso haver continuidade entre a lei e a política em relação aos direitos humanos.

Método: O método de pesquisa utilizado é uma abordagem legal normativa com análise qualitativa. Os dados obtidos incluem fontes legais de primeiro nível, tributárias e de terceiro nível.

Resultado: A implementação da proteção da lei de direitos humanos na Indonésia, após a formação da Lei Número 39 de 1999 relativa aos Direitos Humanos, tem experimentado altos e baixos, que não podem ser separados da aplicação da lei causada por vários fatores. Os direitos humanos exigem independência judicial e o Estado de direito. O problema da defesa dos direitos humanos e do Estado de direito na Indonésia envolve um sistema jurídico degradado e outros sistemas que têm influência significativa, como os sistemas político, econômico e social.

Sugestões: É necessário reexaminar as políticas legais e políticas do governo em relação à defesa dos Direitos Humanos na Indonésia, com foco no estudo dos aspectos legais e políticos dos Direitos Humanos para a Lei Número 39 de 1999 relativa aos Direitos Humanos.

Palavras-chave: lei, Direitos Humanos, implementação, proteção.

1 INTRODUCTION

The issue of Human Rights, abbreviated as HAM, is frequently utilized by external parties to exert pressure on Indonesia in international relations. This is because Indonesia is an international organization that participates in global life.

Indonesia as a country that has a Pancasila state foundation is a middle way for the relationship between religion and the state while at the same time emphasizing that religious law is one of the sources of national law (Mappong, Z., & Lili, L. 2023). For Indonesia the Indonesian Government cannot ignore the development of International Human Rights law. Certain norms of Human Rights, especially those contained in conventions initiated by the United Nations (UN), are widely regarded as the minimum standards for protecting Human Rights worldwide. Such norms are accepted in the international community as general principles of law and international customary law, and therefore, they must be adhered to by all countries.
The definition of legal protection for the people, according to Philipus M Hadjon, in the Dutch language formula, reads **rechtsbescherming van de burgers Tegen de overhead**’ and in the English formula, ‘legal protection of the individual concerning acts of administrative authorities. This means that legal protection for the people has to do with an act of the Government that can carry out arbitrary actions or exceed its authority. Legal protection for the people who hold customary land rights is inseparable from the conception of Article 18 paragraph (2) of the 1945 Constitution, by which the State expressly recognizes and gives respect to the unity of indigenous peoples and their traditional rights. (Ismi, H., & Hasanah, U. 2023). In the context of human rights, it is understood that the essential rights that every human being has and aim to protect them from threats to their existence and dignity. On the other hand, violating human rights means violating the moral, political and legal requirements to provide the same (Mapppong, Z., Yusran, A., & Takwin, M. 2023)

Consequently, there is often no reason for the Government to refuse to ratify specific Human Rights conventions, particularly those recommended by the United Nations (UN). For Indonesia, ratifying Human Rights conventions will increase the international community's trust in Indonesia's commitment to upholding Human Rights. Indonesia's international relations, particularly with the United States and other Western countries, both in economic and political aspects, still require improvements in the protection of Human Rights in Indonesia. Indonesia can enhance its international relations by ratifying Human Rights (HAM) conventions.

Ratifying Human Rights conventions is also expected to strengthen the guarantee of Human Rights protection in Indonesia. Individual rights have received less attention because of Indonesia's historically communal solid background. Therefore, to balance the common good and individual interests, it is essential for Indonesian society, which has historically prioritized the common good, now to pay attention to personal interests and Human Rights. Individual rights must be considered to ensure individuals' responsibilities towards society and the country can be accomplished effectively.

Improving Human Rights protection in Indonesia can enhance the people's trust in the Government, thus reducing protests based on Human Rights issues. This will contribute to public safety and order, resulting in national stability. According to the concept of a democratic rule of law, as adopted by Indonesia, security and order require
not only the absence of disturbances to public safety and order but also the welfare of the people and the guarantee of individual rights.

In various international legal conventions related to law and Human Rights (HAM), Indonesia has consistently positioned itself as a country that supports comprehensive Human Rights protection. This is evident from the fact that since the reform era in 1998, Indonesia, despite having relatively few regulations in the field of Human Rights, has actively engaged in multilateral international agreements, particularly Human Rights. In addition to having its legislation regarding Human Rights, namely Act Number 39 of 1999 concerning Human Rights and Act Number 26 of 2000 concerning Human Rights Courts, Indonesia has shown increased involvement in participating as a party to various international agreements in the field of Human Rights.

However, Indonesia's participation in these agreements varies from the country's implementation of Human Rights protection. This can be seen from the dynamics of Human Rights protection in Indonesia, which has not progressed significantly since the post-reform era of 1998. A report related to Human Rights issued by Human Rights Watch even found that in 2008, Indonesia demonstrated inadequate advancement in comprehensive Human Rights protection, marked by restrictions on freedom of religion and press. (Human Right Watch World Report 2009)

Various Human Rights violations since the old order era have yet to receive legal certainty, ranging from the mass killings of over half a million people accused of being members and sympathizers of the Indonesian Communist Party (PKI) in 1965-1966, Human Rights violations in Papua against individuals suspected of sympathizing with the Free Papua Movement (OPM) in 1962-1998, the massacre of civilians in Santa Cruz, Dili, East Timor in 1973-1998, the Tanjung Priok incident in 1984, the Trisakti and Semanggi murder cases in 1998-1999, and Human Rights violations against civilians in Aceh since 1989. Lastly, the case of the shooting of six members of the Islamic Defenders Front (FPI) on the Japek Toll Road KM 50 in 2021, according to the Murder Incident Monitoring Team (TP3) led by Amien Rais, is considered a severe Human Rights violation. The perpetrators of Human Rights violations in these cases were mainly commanded by the State, specifically the Indonesian National Armed Forces (TNI). The Aceh case has been peacefully resolved since the Memorandum of Understanding (MoU) signing in Helsinki, Finland, in 2005, between the Government of the Republic of Indonesia and the Free Aceh Movement (GAM). One of the points in the MoU was the Indonesian Government
granting amnesty to all individuals involved in the Free Aceh Movement (GAM) activities and the unconditional release of prisoners and political detainees held due to the conflict. However, the dispute's Truth and Reconciliation Commission has not been established.

As for the case of East Timor, it received an *in-kracht* verdict from the Ad hoc Human Rights court in 2005. However, the ruling itself cannot be considered as reflecting a sense of justice because out of the 18 defendants, all were eventually acquitted.

In the cases of Trisakti and Semanggi, on March 31, 2008, the Attorney General's Office (Kejagung) returned the investigation files of Human Rights violations related to the shootings of Trisakti University students and the Semanggi 1 and Semanggi 2 incidents, as well as the May 1998 riots. It forced disappearances to the National Commission on Human Rights (Komnas HAM). The investigation files were returned, among other reasons, because they were awaiting the formation of the Ad Hoc Human Rights Court.( http://komnasham.go.id/portal/id/content/talangsari-tidak-bisa-disidik )

Finally, in the case of the shooting of FPI members on the Japek Toll Road, the National Commission on Human Rights (Komnas HAM) determined that the incident did not constitute a severe violation of human rights because it did not fit the two requirements of being systematic and widespread. (https://www.merdeka.com/peristiwa/komnas-ham-kasus-penembakan-laskar-fpi-bukan-pelanggaran-ham-berat.html)

The series of cases mentioned above proves that the tragedy of Human Rights violations in Indonesia has become a well-known fact internationally. The enforcement of Human Rights in Indonesia has experienced a "chronic illness" as most perpetrators of Human Rights violations in the country are, in fact, law enforcement officials themselves.

Furthermore, as we all know, one of the tragic instances of Human Rights violations committed by law enforcement officers is the violation of Human Rights in Makassar City during the incident at the State University of Makassar (UNM) Gunung Sari related to the protest against the increase in fuel prices at the end of 2014. The arrogance of the police in launching an attack on the UNM campus against those who voiced their opposition to the Government's policy resulted in both material and immaterial losses. There were damages to classroom windows, destruction of dozens of students' parked motorcycles, and even attacks on students and bureaucrats within the
UNM campus. These actions were a spectacle of the depravity of the perpetrators of these acts of vandalism in front of the public.

Therefore, the study conducted by the writer will provide critical momentum to redress previous Human Rights violations within the framework of transition and the maturation of democracy in Indonesia.

At the beginning of 2009, the author had placed hope for several reasons. First, the Constitutional Court (MK) issued a ruling that annulled the House of Representatives (DPR) of the Republic of Indonesia to make 'allegations' in cases like the Trisakti-Semanggi incidents. Second, the formation of a special committee (Pansus) by the Indonesian House of Representatives (DPR RI) to investigate claims of forced disappearances of activists in 1997/98. Third, meetings between the victims and high-ranking state officials include the President, Coordinating Minister for Politics, Law, and Security, Minister of Law and Human Rights, Cabinet Secretary, Minister for State Secretary, Minister for Foreign Affairs, and Minister for Defence.

However, history records that throughout its journey, there has yet to be progress in upholding Human Rights in Indonesia. Yet, the resolution of past human rights violations cases should be based on the concept of revisiting the truth from the past, which means looking back at that truth and placing it in the perspective of the future. This is crucial for the future.

The substance of Human Rights that prioritizes political justice, equality, and diversity as a struggle for the fundamental interests of the public welfare has been used as a politics of identity antagonism (La Ode Husen, Said Sampara, Suﬁrman Rahman, Sarifuddin Umar, 2017) . As a result, it erodes the aspiration for justice in economic distribution, such as the welfare of laborers in relation to investors, farmers with landowners within the framework of agrarian reform, or issues concerning the impoverished with development, including the resolution of severe human rights violations during the Soeharto era. The problems underlying the 1998 reform movement started to fade away in the realm of unconscious reform, which began after the September 11, 2001 attacks in the United States, which had negative impacts on many countries.

The main issue is not whether this discourse will turn Indonesia into a theocratic state (a state governed by religious principles). Instead, this tendency has slowly eroded the democratic quality of fundamental freedoms. Human Rights, originally based on the principle of "freedom from fear," has turned into "fear of freedoms."
Therefore, the writer considers it necessary to reexamine the Government's legal and political policies regarding the upholding of Human Rights in Indonesia, focusing on the study of the legal and political aspects of Human Rights in relation to Act Number 39 of 1999 concerning Human Rights.

2 METHODOLOGY

This study uses the normative legal approach, the inventory, analysis, analysis, and understanding of law as a set of norms or positive norms in the legal system that regulates human life. Secondary data include, among others, library materials related to research. Secondary data includes first-order lawful resources, tributary legal resources, and third-rate legal supplies. (Khalid, H., Hakim, A., Nawi, S., & Husen, L. O. 2023)

The legal material analysis in this research utilizes qualitative analysis. Qualitative analysis of legal material is conducted on data that cannot be quantified, which includes all primary legal sources, secondary legal sources, and tertiary legal sources. (Syahrudin Nawi, 2014)

3 RESULTS AND DISCUSSION

A country with the ideology it adopts will fundamentally influence the lives of its citizens, including the implementation of their human rights. With their liberalism, Western countries like the United States allow their citizens to act freely, with very little government intervention.

Meanwhile, Indonesia adheres to the ideology of Pancasila, which implements human rights according to its fundamental principles. Based on Pancasila, every Indonesian citizen has basic rights that must be implemented with freedom. However, this freedom is limited by the rights of others. This means that despite having freedom, citizens must be responsible for it by considering and not violating others' rights. However, in reality, this concept has yet to be fully embraced by the people of Indonesia.

With the advent of the reform era, a number of regulations were developed to improve Indonesia's human rights situation, especially civil and political rights. These include Articles 28A to 28J of the 1945 Constitution, Stipulation of the People's Consultative Assembly No. XVII/MPR/1998 concerning Human Rights, Press Laws, Law on Human Rights (Law No. 39 of 1999), Election Law, Political Party Law, and Regional Autonomy Law. On the political side, Indonesian citizens have been granted
broad political freedoms. There are four basic political freedoms, including the right to freedom of expression and communication, the right to assemble, the right to associate, and the right to participate in Government.

Through various media, nearly all segments of the Indonesian society now are able to express their feelings and opinions openly and without any fear, unlike during the New Order era. Consequently, the Indonesian people have the relative freedom to communicate their thoughts and share information. They can also assemble freely without seeking prior permission from authorities for events like seminars or public gatherings, which was mandatory during the New Order period.

Furthermore, Indonesian citizens have also experienced the freedom of association. Not only can they establish political parties to express their political goals, but the Indonesian citizens can also form various organizations such as farmers’ unions, labor unions, and indigenous associations. This helps strengthen civil society, which plays a vital role in a democratic political system and governance.

However, it is apparent that Indonesia has faced numerous obstacles in investigating severe human rights violations. The public can form their own judgment on how the investigations into the Trisakti-Semanggi Incident, the May 1998 Riot, and Cases of Forced Disappearances have progressed. The Government's inability to resolve human rights issues has raised questions among the public about the seriousness of its commitment to addressing these issues.

Despite having political freedom, Indonesian citizens lack the proper legal protection for civil rights. These rights include personal freedom, protection from torture or inhuman treatment, the right to a fair trial, and equal treatment under the law. In various regions, such as Poso, Papua, Jakarta, and other places in Indonesia, incidents of violence involving the police and military are still being reported.

It is concerning that in many instances of violence between groups, the security forces seem unable to protect the targeted individuals. Past cases of severe human rights violations, like murders, abductions, and unjustified detentions of hundreds of thousands of people suspected of being associated with the PKI (Communist Party of Indonesia), and other cases, have not yet received fair treatment to this day.

The concept of Human Rights consists of three main elements essential for human existence as social beings, which are human integrity, freedom, and equality. These elements are conceptualized into understandings and interpretations of Human Rights.
The understanding of this concept becomes clear when others recognize and respect these rights, whether de facto or de jure, in vertical or horizontal contexts. Thus, the values of Human Rights are universal as it acknowledges, protect, and promote human integrity, freedom, and equality through key Human Rights instruments at international, regional, and national levels. (Eide Asbjorn, 1995)

In spite of the universality of these values, Human Rights can be academically normatively categorized as follows: personal rights, economic rights, property rights, the right to equal treatment in law and Government, the right to political representation, the right to political participation; the right to access education and to develop preferred cultures; the right to procedural protection. The understanding of Human Rights in terms of substance becomes complex and complicated due to developments, existing realities, and various determinant factors.

The concept and values of Human Rights have evolved over time, both through evolutionary and revolutionary processes, imposing normative forces into social and political changes in all aspects of human life. (Taihitu Bonanza Perwira 2003) Thus, Human Rights must be understood in substance based on the fundamental concept of why they exist. Human Rights exist and emerge because it is essential for human development to be in accordance with their talents, aspirations, and dignity as human beings, regardless of differences that may lead to discrimination based on nationality, race, religion, and gender. The principles of understanding Human Rights should be the primary foundation to make the substantive understanding and application of Human Rights applicable. These principles are derived from the application of the concepts of indivisibility and interdependence of the values of Human Rights themselves. (UNICEF, 1998)

Human Rights, as understood in documents such as the Universal Declaration of Human Rights (UDHR) that surfaced during the twentieth century, have several prominent characteristics. First, to avoid losing its idea, human rights are considered as rights. Though the exact meaning of this term may need to be clarified, it signifies that these are definite norms with high priority that must be enforced. Second, these rights are perceived as universal, inherent to all human beings solely because they are human. (Nickel James W, 1987)

This viewpoint indirectly indicates that race, gender, religion, social status, and nationality are irrelevant when determining whether someone deserves Human Rights. It
also implies that these rights can be applied worldwide, and one distinguishing feature of current Human Rights is that they are considered international rights.

Generally, compliance with these rights has been considered a legitimate international concern. Third, Human Rights are considered to exist innately, and do not rely on acknowledgment or enforcement within the particular legal or customary systems of specific nations. While these rights may only be effectively realized once enforced through the law, they exist as standards for arguments and criticisms that do not depend on their legal application. Fourth, Human Rights are seen as essential norms.

Even though Human Rights are not absolute and without exceptions, they have a strong normative status when they collide with national norms, which justifies international actions to protect them. The rights mentioned in the declaration are not categorized or labeled as absolute, and it does not explicitly state that some have no exceptions. Therefore, the Human Rights presented in the declaration are what philosophers refer to as "prima facie rights." Furthermore, these rights imply obligations for both individuals and governments. The obligations associated with these rights are considered independent of acceptance, recognition, or implementation. Both individuals and governments are required to avoid violating someone's rights, and governments may have the primary responsibility to protect and uphold these rights actively. These rights establish the minimum standards for acceptable societal and State practices. However, not all issues arising from cruelty, self-interest, and ignorance are regarded as Human Rights concerns. For instance, if a government needs to provide national parks for its citizens, it might face criticism for disregarding their recreational opportunities due to the lack of facilities. Still, it will not be considered a Human Rights issue.

Both the State and individuals have their roles in implementing Human Rights. It is important to note that Human Rights include entitlements and freedoms and responsibilities or obligations on the part of individuals. This is because of the principle of balance previously mentioned. Each individual, as a subject of Human Rights, has the responsibility to respect the Human Rights of others, just as they expect their rights to be respected. Violations of an individual's Human Rights by others can be held legally accountable. Nonetheless, the role of the country is central and crucial in the implementation of Human Rights.

According to various Human Rights instruments, it is a country's responsibility to implement Human Rights. A nation must guarantee that Human Rights are respected,
protected, promoted, and fulfilled. There are levels of effort that a government should take to implement Human Rights; it varies from "to respect," "to protect," "to promote," and "to fulfill." When a country joins an International Human Rights treaty, it can decide to directly include the treaty's principles in its own laws or undertake other needed actions. The practical implementation of Human Rights can be achieved with suitable legislation, an independent judiciary, and stable democratic institutions. Additionally, educating and disseminating Human Rights values are crucial for successful implementation.

4 CONCLUSION

The implementation of legal protection for Human Rights in Indonesia, after the establishment of Law Number 39 of 1999 on Human Rights, has faced challenges and fluctuations. This is partly due to issues within the enforcement of law, categorized by Friedman as structure, substance, and culture. Moreover, the need for more independence among law enforcement institutions in Indonesia remains a serious problem. These institutions need more resistance against interference from external sources, especially the executive branch, despite Human Rights enforcement requiring an independent judiciary and a government based on the rule of law. The problems with Human Rights enforcement and the rule of law in Indonesia do not solely involve the degradation of the legal system but also affect other significant systems, such as politics, economy, and society.
REFERENCES


