

## OVERVIEW OF HUMAN RIGHTS IN THE INDONESIAN CONSTITUTION

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### ABSTRACT

The central point of constitutionalism is the problem of Right Fundamental humans. related to this, the role constitution is very important which is not only just to give guarantee and protection in a manner written, however Also to provide various values used by the institution of Justice in the interpretation and elaboration of rights. the Objective article explains the connection between the Constitution and the right of basic human which include content, meaning, place in the Constitution, and consequence arrangement of the right of basic man in the Constitution. The method of research used is the literature review method. Results study article This is put a right basic man in constitution No only make it as fundamental rights, but rather as right highest constitutional.

**Keywords:** *Constitution, Human Rights, Overview.*

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### 1. INTRODUCTION

Talking about human rights (HAM) means talking about the dimensions of human life. Etymologically, human rights are formed from three words, namely rights, human rights and human rights. The words rights and human rights come from Arabic, namely *haqq* and *asasiy*. The word *haqq* means true, real, certain, fixed, and obligatory. The definition of *haqq* is the authority or obligation to do something or not to do something. Another case with the word *ASIY* which means to build, establish, origin, principle, base, or basis of all things. Basic understanding is everything that is fundamental attached to the object. While the word human comes from Indonesian. The definition of human rights in Indonesian is the fundamental rights of human beings (El-Muhtaj, 2012: 1).

Hardjowirogo, the terms HAM are translated from English, namely *basic rights* and *fundamental rights*, while in Dutch they are *grondrechten* and *fundamental rechten*. In terms of terminology, human rights are defined as basic rights or basic rights that humans have been born with, as gifts and gifts from God Almighty. Human rights are rights that humans have solely because they are human (Basuki, 2012: 21).

The concept of human rights has developed in such a way that currently human rights have become an interesting object of study. Human rights are increasingly developing along with the development of the face and self-demands of the human being himself which tends to be influenced by the locality of his own environment and society. For that reason too, the influence surrounding the human rights discourse deserves to be considered as an integrated study so that a full understanding of human rights can be obtained.

Initially, the emergence of the term human rights was due to the universal human desire and determination to recognize and protect basic human rights. It can be said that the term human rights is closely related to the social and political reality that is developing. Human rights reviewers note that the birth of human rights was a reaction to the actions of autocrats played by those in power. As stated by Jenkins in his book entitled *Social Order and the Limits of Law: A Theoretical features*, as follows:

*Shocked by the experience they have gone through and thus clearly aware of the sad conditions in which millions of people live and the abuse they experience, the nations of the world deny the past and express their determination to create a brighter future. HAM is the vehicle they use to describe this future contour and describe its most important features* (El-Muhtaj, 2012: 1).

This action ultimately raises awareness for humans that they have honor that must be protected. Then this is where the discourse of democracy sticks out, namely a country that prioritizes ensuring the people's survival safely and well. Therefore, in the practice of democratic life, the constitution as a *fundamental law* in a country becomes an inseparable part of law enforcement efforts.

The constitution is present as a key word in the life of modern society. Therefore, as an important part of the life of the state, the constitution reflects a significant relationship between the government and the people. Theoretically, all nation-states express their main views, stances, conceptual principles regarding the management of their lives in the form of a constitution, both written and unwritten. As for this paper, the author limits the study of human rights in the constitution that is documented and applies in Indonesia, namely the Basic Law or what is often referred to as the 1945 Constitution.

## 2. RESEARCH METHOD

The method used in writing the article This is the literature review method which is Wrong One method study qualitative. Method This uses search literature Good national nor carried out internationally using the Mendeley database, Science Direct, and Proquest. Several studies earlier become guidelines for researchers in writing the article. Main data source in article This is the data library, which consists of books, journals, and related internet sites with the topic Overview Right Fundamental Man in Indonesian Constitution. In writing an article, to get valid results, authors select, compare, and combine various existing reference data sources so the data is found relevant And each other support.

## 3. RESULTS AND DISCUSSION

### a. Definition and Contents of Human Rights

Human rights are basic rights that every human being has as a gift from God that is inherent in every human being from birth. There are several human rights terms in several languages, English ( *Human Rights* ), French ( *Droits de L'homme* ), Spanish ( *Derechos del Hombre* ), and Dutch ( *Menselijke Rechten* ). Literally, human rights are rights that are owned by everyone because people are humans (Melianti, 2011: 351).

John Locke, who is called the father of human rights, gave his views on human rights, even though there is an agreement to form a unified society or state, the people still choose *natural rights* as *inalienable rights* . That is, the state or government may not deprive human beings of their natural rights, namely *life* , *liberty* , and *property* . As stated by John Locke in the book *Two Treaties of Civil Government* (Manan, 2016: 450):

*But even though humans when they enter society relinquish the equality, freedom, and executive power they have in the state of Nature into the hands of society, so far disposed of by the legislature as would be demanded by a good society, but it remains only with the intention in everyone, those who maintain themselves, their freedom and property, ... the power of society or the legislature formed by them can never expand beyond the common good but is obliged to secure the property of all people by providing for the three defects mentioned for what makes the state of nature uncomfortable .*

Jan Materson defines human rights as ' *human rights in general can be defined as rights inherent in our nature and without which we cannot live as humans* ' (Hidayat, 2016: 81). Because of their basic and basic nature, human rights are often considered rights that cannot be revoked or eliminated by anyone, not even any power that has the legitimacy to rape them. This means that human rights need to be guaranteed by the state and anyone who violates them must receive sanctions.

A different view was conveyed by Jack Donnelly. According to Donely, human beings have basic rights not on the basis of giving positive law, but naturally because of their dignity as human beings (Halili, 2015: 1). Views related to human rights, according to Donely, emphasize that human rights exist together with the birth of human existence.

According to Sidney, human rights are demands that are morally justifiable, so that all human beings can enjoy and exercise their basic freedoms, property and services deemed necessary to achieve human nature. Meanwhile, Dad Darmodiharjo defines human rights for the basic and basic rights that are given to humans from birth as a gift from God Almighty (Ma'u, 2016: 2).

Another opinion was conveyed by C. De Rover (Atqiya, 2014: 172) who stated that human rights are legal rights that everyone has as human beings. According to Rover, these rights are universal and belong to every person, rich or poor, male or female. These rights may be violated, but never waived. Human rights are legal rights, meaning that human rights are protected by national constitutions and laws in many countries of the world.

Ubaidillah and Rozak (2006: 253) argue that human rights are rights granted directly by God Almighty as something that is natural. Because of its nature, there is no power in the world that can revoke the human rights of every human being.

Whereas in Article 1 paragraph (1) of Law No. 39 of 1999 concerning Human Rights and Article 1 paragraph (1) No. 26 of 2000 concerning the Human Rights Court states that human rights are a set of rights that are inherent in the nature of human existence as creatures of God Almighty which is a gift and must be respected, upheld and protected by law, government, state, and every person for the honor and protection of human dignity. and human dignity (Suteng, 2006: 102).

Some of these definitions of human rights can be concluded that human rights are basic rights inherent in individuals from birth naturally which are given directly by God Almighty and cannot be taken away or revoked. Or, human rights are various basic facilities given by God to mankind and every human being has the same facilities.

### **b. Human Rights Regulations in the Indonesian Constitution**

Discussion of human rights in the 1945 Constitution almost always returns to the different views between Supomo and Soekarno on the one hand, Hatta and Yamin on the other. There are discourses or writings as if Supomo and Soekarno rejected human rights because they were rooted in liberalism and individualism. On the other hand, Hatta and Yamin defended human rights on the grounds that this did not conflict with the notion of kinship.

Human rights arrangements based on the 1945 Constitution can be seen from the provisions in the opening of the articles in the Body after the amendment. Human rights thinking since the beginning of the independence movement until now has received recognition in the form of written law as outlined in various statutory regulations in the constitution as the highest statutory regulations in Indonesia (Haryanto, et al. 2008: 138).

Even though the preamble to the 1945 Constitution does not explicitly mention the word human rights, the 1945 Constitution still contains general principles that can be used as a basis for the development of a more detailed concept of human rights. As for the perspective of human rights in the Body of the 1945 Constitution, it can be said that it contains little about human rights. The following are direct articles that contain human rights (Nusantara, 2017: 319):

- a) Article 27 paragraphs (1) and (2) which contain:
  1. All citizens are equal in law and government and are obliged to uphold law and government without exception.
  2. Every citizen has the right to work and a decent living for humanity.
- b) Article 28 contains freedom to associate and assemble, to express thoughts and write and so on is stipulated by law.
- c) Article 29 paragraph 2 states that the state guarantees the freedom of every citizen to embrace their own religion and to worship according to that religion and belief.
- d) Article 31 paragraph (1) states that every citizen has the right to receive education.
- e) Article 34 states that the poor and neglected children are cared for by the state.

However, on the other hand there is a note regarding Article 28 of the 1945 Constitution. According to statutory techniques, this article is commonly grouped as an 'indicating article' which orders the formation of organic laws. There are two views on this guiding article, first, the opinion which says that because it will or must be regulated by law, it means that the 1945 Constitution has not guaranteed the right to meetings, the right to assemble, and the right to express opinions. Second, the opinion stating that the human rights of the 1945 Constitution have guaranteed the rights to meet, assemble, and the right to express opinions that as an implied provision it is *impossible* for the legislator to make provisions that do not guarantee these rights (Manan, 2016: 463).

One of the failures of the 1945 Constitution as a basis for implementing the principles of democracy and a state based on law is partly due to the absence of content material, such as regarding human rights. Discourse about the need for human rights to be included in the Constitution grew when awareness of the importance of guaranteed protection of human rights increased following the collapse of the authoritarian regime. A critical view of the 1945 Constitution, which was previously taboo, since the reform era justifies the opinion that the Constitution does not explicitly regulate human rights issues. In fact, some experts explicitly state that the 1945 Constitution does not recognize human rights because it was formulated before the existence of the Universal Declaration of Human Rights.

The concept or arrangement of human rights in the 1945 Constitution was ratified during the Plenary Session of the MPR Annual Session on 18 August 2000. Prior to being ratified, material on human rights

content had been discussed since 1999. This material was first discussed by the Ad-Hoc Committee (PAH) III of the Working Committee (BP) ) MPR. Furthermore, the discussion results of PAH III were continued by PAH I in the 1999-2000 period. The discussion by PAH I resulted in a draft amendment to the articles on human rights. The draft was then brought to the Commission A forum in the ST MPR 2000 and ratified through the MPR Plenary Session.

The results of the amendments to the 1945 Constitution provide a bright spot that Indonesia is increasingly paying attention to and upholding human rights values which so far have received little attention from the government. The second amendment issues a special chapter on human rights, namely Chapter XA. Provisions regarding human rights in Chapter XA on Human Rights which consists of ten articles. The articles in question are Articles 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, and Article 28J. The ten chapters consist of 26 verses. As for the 26 verses referred to, 21 of them regulate rights, two paragraphs regulate obligations, two paragraphs concern restrictions on rights, one paragraph further regulates guarantees for the implementation of human rights (Isra, 2014: 413).

The reference behind the formulation of Chapter XA on Human Rights in the 1945 Constitution is MPR Decree No. XVII/MPR/1998. The MPR decree then gave birth to Law no. 39 of 1999 concerning Human Rights. MPR Decree No. XVII/MPR/1998 and Law No. 39 of 1999 is a spirit that adheres to the conviction that human rights are not without limits. The same spirit is also contained in the arrangements regarding human rights in the 1945 Constitution, namely that human rights are not as free as possible but the possibility to be limited insofar as these limitations are determined by law (Haryanto, 2008: 139).

The said limitation is contained in Article 28J which covers from Article 28A to Article 28I of the 1945 Constitution. Therefore, what needs to be emphasized in this matter is that none of the human rights regulated in the 1945 Constitution are absolute, including human rights regulated in Article 28I paragraph (1) of the 1945 Constitution. If it is withdrawn from the perspective of the *original intent* of the 1945 Constitution, that all human rights listed in Chapter XA of the 1945 Constitution can be limited, it is also strengthened by the placement of Article 28J as the concluding article of all provisions that regulates human rights in Chapter XA of the 1945 Constitution.

In a systematic interpretation ( *systematic interpretation* ), the human rights regulated in Article 28A to Article 28I in the 1945 Constitution are subject to the restrictions regulated in Article 28J of the 1945 Constitution. The systematic regulation regarding human rights in the 1945 Constitution is also in line with the regulatory systematics in the Universal Declaration of *Human Rights* which places the article on the limitation of human rights as the closing article, along with the affirmation of Article 29 paragraph (2):  
*in exercising their rights and freedoms, each person will only submit to restrictions as determined by law solely for the purpose of securing recognition and respect for the rights and freedoms of others and to fulfill the requirements of fair morality, public order and general welfare in a democratic society .*

Article 28A of the 1945 Constitution regulates the right of everyone to live (everyone also includes children). This indicates that the 1945 Constitution gives special attention to children. Because children are a group that is very vulnerable to becoming victims of human rights violations. Apart from children, groups that also receive special attention in the 1945 Constitution are traditional communities or customary law communities. Recognition of the rights of indigenous peoples or *indigenous people* is a consequence that Indonesia is a multi-ethnic, multi-cultural, multi-religious and multi-national country (Isra, 2014: 416). Meanwhile, the guarantee of respect for the rights of traditional communities is regulated in Article 28I paragraph (3) of the 1945 Constitution which states 'the cultural identity and rights of traditional communities are respected in accordance with the times and civilization's developments'.

Provisions related to obligations in the context of human rights, there are two paragraphs that regulate them in Article 28I and Article 28J of the 1945 Constitution as follows:

- a. Article 28I paragraph (4) states that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.
- b. Article 28J paragraph (1) states that everyone is obliged to respect the human rights of others in orderly life in society, nation and state.

Based on this description, it can be constructed that a concept has a subject who acts as an obligation holder and a subject who acts as a rights holder in the context of human rights law. The stakeholders according to the 1945 Constitution are the state and individuals. Countries and individuals have different burdens of liability. As a subject, the state carries out the obligations as regulated in Article 28I paragraph (4), while individuals carry out the obligations regulated in Article 28J paragraph (1) of the 1945 Constitution.

The state's obligation is emphasized in Article 28I paragraph (4) which states that with regard to the obligation to take legislative, administrative, judicial and practical actions necessary to ensure that the rights

concerned must be implemented as much as possible (Nowak, 2003: 51). All institutions that carry out state functions have the burden of responsibility for respecting, upholding, protecting and fulfilling human rights.

When viewed from the history of the development of Indonesian constitutionalism, as reflected in the constitutions that were once in force, namely the 1945 Constitution before the amendment, the 1949 RIS Constitution, the 1950 Constitution, and the 1945 Constitution after the amendment, it appears that there is a tendency not to absolute human rights, in the sense that in matters certain things, by order of the constitution, human rights can be limited by a law. Here's the explanation:

- a. Prior to the amendment, the 1945 Constitution did not explicitly and completely contain provisions regarding human rights, including the right to life, even though the 4th paragraph contained what was later referred to as Pancasila, one of which was the principle of "just and civilized humanity".
- b. Article 32 paragraph (1) of the RIS Constitution contains provisions regarding the limitation of basic human rights and freedoms, as follows: Legislative regulations regarding the exercise of rights and freedoms described in this section, if necessary, will determine the limits of those rights and freedoms, but only for the sole purpose of guaranteeing the indispensable recognition and respect for the rights and liberties of others, and for meeting the just requirements for peace, decency and the general welfare in a democratic society.
- c. Article 33 of the 1950 Constitution of the Republic of Indonesia limits human rights (basic human rights and freedoms) as follows: Exercising the rights and freedoms described in this section can only be limited by statutory regulations solely to guarantee recognition and respect that must not be lacking for the rights and freedoms of others, and to fulfill the just requirements for peace, decency and welfare in a democratic society.
- d. After the amendment of the 1945 Constitution, through Article 28J it seems that it will continue the constitutional ideology (constitutionalism) that was adhered to by the previous Indonesian constitution, namely making restrictions on human rights as previously described.

In line with Indonesia's constitutionalism regarding human rights as has been described, MPR Decree No. XVII/MPR/1998 concerning Human Rights, which was further elaborated upon in the Human Rights Act, the two legal products appear to be a continuation as well as an affirmation that Indonesia's view of constitutionalism has not changed because in fact both of them also contain restrictions on human rights. As an example of restrictions on the right to life:

- a. Tap MPR No. XVII/MPR 1998 contains the 'Nation's Views and Attitudes towards Human Rights' which originates from teachings, universal moral values, and noble cultural values of the nation, and is based on Pancasila and the 1945 Constitution. Article 1 of the Human Rights Charter contains provisions concerning the right to life which reads 'Everyone people have the right to live, to defend their lives and livelihoods', however Article 36 also contains restrictions on human rights including the right to life as follows: 'In exercising their rights and freedoms each person is obliged to comply with the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others, and to fulfill just demands in accordance with considerations of morality, security and public order in a democratic society'.
- b. The Human Rights Law in Article 9 paragraph (1) contains provisions regarding the right to life and in Article 4 it stipulates that the right to life includes human rights which cannot be reduced under any circumstances and by anyone. However, the elucidation in Article 9 of the Human Rights Law states that the right to life can be limited in two respects, namely in the case of capital punishment based on a court decision. Apart from that, Article 73 of the Human Rights Law also contains provisions regarding limitations on human rights as follows: The rights and freedoms regulated in this law can only be limited by and based on laws, solely to guarantee recognition and respect for Human rights and other people's basic freedoms, decency, public order, and the interests of the nation.

Article 28I paragraph (1) of the 1945 Constitution contains a number of rights which are literally formulated as 'rights that cannot be reduced under any circumstances', including the right to life and the right not to be prosecuted under retroactive law. This context can be interpreted that Article 28I paragraph (1) must be read together with Article 28J paragraph (2), so that the right not to be prosecuted under a retroactive law is not absolute.

The human rights provisions in the 1945 Constitution which form *the basic law* are the highest norms that must be obeyed by the state. Because it is located in the constitution, provisions regarding human rights must be respected and guaranteed by the state (Arinanto, 2003: 17). Therefore Article 28I paragraph (4) of the 1945 Constitution emphasizes that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.

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Even though there has been Law No. 39 of 1999 concerning Human Rights which is based on TAP MPR No. XVII of 1998, but the inclusion of human rights content in the constitution is expected to further strengthen the commitment to the promotion and protection of human rights in Indonesia, because it will make it a constitutionally protected right.

The regulation of human rights in Indonesia based on the 1945 Constitution emphasizes that in order to uphold and protect human rights in accordance with the principles of a democratic legal state, the implementation of human rights is guaranteed, regulated and set forth in statutory regulations, by stipulating Law no. 39 of 1999 concerning Human Rights (although it was formed before the amendment to Article 28 of the 1945 Constitution).

Law No. 39 of 1999 concerning Human Rights which was formulated on 23 September 1999 is seen as one of the implementing regulations of MPR Decree No. XVII/MPR/1998 concerning Human Rights, this can be seen in one of the legal bases which include the decree.

There are criticisms of the formation of Law no. 39 of 1999 when viewed from the point of view of the science of law, among others:

1. There are provisions that do not contain norms and rules. This is shown by the existence of a chapter on basic principles. Basic principles in principle are not rules or legal norms. That is, the principle does not need to be explicitly contained in the law but will animate the existing articles in the relevant law.
2. There is a deviation from the principle that the law does not apply retroactively and should not be placed in the elucidation section, but in the body of the law. This causes the explanation does not contain norms or rules. In other words, explanations do not function to create legal rules (Sumali, 2003: 90).

*non-derogable* rights . Article 5 paragraphs (1) and (2) state that every person has the right to be recognized as a person in the field of law who has the right to receive fair assistance and protection from an objective and impartial court. Article 5 paragraph (3) states that there is more human rights protection for vulnerable groups. However, things that need to be appreciated from Law no. 39 of 1999, namely the placement of regulations regarding children's human rights and women's human rights which are carried out separately. This position is in line with developments occurring in the international world, as evidenced by the existence of separate international legal instruments for children and women .

#### 4. CONCLUSION

Legislative arrangements regarding human rights after the amendments to the 1945 Constitution are regulated in detail in Article 28 A to Article 28 J. Based on these provisions, it states that there is no human rights in Indonesia that are absolute or without limits. Human rights are not *absolute* rights in that their implementation is limited by the rights of others, morals, security and order. Therefore, human rights are recognized by the existence of basic human obligations. Thus, the implementation of human rights of a person and all elements of society should be able to respect the human rights of others as stipulated in the 1945 Constitution.

**REFERENCES**

- Atqiya, N. (2014). Ham Dalam Perspektif Islam. *Islamuna: Jurnal Studi Islam*, 1(2).
- Basuki, U. (2012). Perlindungan HAM dalam Negara Hukum Indonesia: Studi Ratifikasi Konvensi Hak-hak Disabilitas (Convention on The Rights of Persons with Disabilities). *Jurnal Sosio-Religia*, 10(1).
- Halili. 2015. Hak Asasi Manusia: Dari Teori Ke Pedagogi. Fakultas Ilmu Sosial Universitas Negeri Yogyakarta
- Haryanto, T., Suhardjana, J., Komari, A. K. A., Fauzan, M., & Wardaya, M. K. (2013). Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum Dan Setelah Amandemen. *Jurnal Dinamika Hukum*, 8(2), 136-144.
- Hidayat, E. (2016). Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia. *ASAS*, 8(2).
- Isra, S. (2016). Peran Mahkamah Konstitusi dalam penguatan hak asasi manusia di Indonesia. *Jurnal Konstitusi*, 11(3), 409-427.
- Ma'u, D. H. (2016). Hak Asasi Manusia (Ham) Dalam Islam. *Jurnal Ilmiah Al-Syir'ah*, 1(1).
- Manan, B., & Harijanti, S. D. (2016). Konstitusi dan Hak Asasi Manusia. *Padjajaran Jurnal Ilmu Hukum*, 3(3).
- Melianti, Y. 2011. HAM diantara Normatif dan Realita di Indonesia. -, 350-360.
- Nowak, Manfred, 2003. Pengantar pada Rezim HAM Internasional, Raoul Wallenberg Institute of Human Rights and Humanitarian Law kerjasama dengan Departemen Hukum dan HAM Indonesia.
- Nusantara, A. H. G. (2017). UUD 1945 dalam Perspektif HAM. *Jurnal Hukum & Pembangunan*, 19(4), 313-323.
- Sumali. 2003. Reduksi Kekuasaan Eksekutif di Bidang Peraturan Pengganti UndangUndang. Malang: Universitas Muhammadiyah Malang
- Suteng, Bambang. Pendidikan Kewarganegaraan, Jakarta: Erlangga, 2006.
- Ubaidillah, dkk. Demokrasi Hak Asasi Manusia. Jakarta: UIN Syarif Hidayatullah, 2006.
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