

OPTIMIZATION OF THE AUTHORITY OF THE NATIONAL HAM COMMISSION IN FULFILLING HUMAN RIGHTS IN INDONESIA

¹ Riski Pardinata Berutu, ²Rizky Darmawansyah Sihombing, ³Yati Sharfina Desiandri.

¹²³ Universitas Sumatera Utara

Email : riskipardinata@students.usu.ac.id

ABSTRACT

Problems related to Human Rights still often occur in Indonesia. Based on historical records, gross human rights violations occurred during the New Order government. The many human rights violations that occurred have not been resolved until now. In fact, in terms of authority, Komnas HAM is given the authority to conduct investigations into allegations of gross human rights violations. Not only that, the functions and duties of Komnas HAM can also be concluded as preventive duties and functions so that human rights violations do not occur. However, the authority of these duties and functions has not been optimally implemented by Komnas HAM. This can be seen from the conflict related to allegations of gross human rights violations in the past that have not been resolved. This research is a normative legal research with a statute approach. In the end, it can be seen that the existence of Komnas HAM began in 1993 through Keppers No. 50 of 1993 which has developed and regulated Komnas HAM into Law No. 39 of 1999 concerning human rights. Normatively, Komnas HAM has the function of studying, researching, providing information, monitoring, and mediating human rights. However, this function is considered not to have been implemented optimally considering the many human rights violations that still occur in the community.

Keywords: *Optimization, Authority, Human Rights.*

Journal History

Received	: November 12, 2024;
Reviewed	: November 13, 2024;
Accepted	: November 26, 2024;
Published	: November 26, 2024.

Copyright @2022 NLR. All right reserved.

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia is the Constitution that contains the basic rules for the Indonesian state. In terms of state administration, Indonesia bases itself on becoming a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which has emphasized that Indonesia is a state of law. In the framework of a state that prioritizes the supremacy of law, law becomes the highest authority, which means that every

action and behavior of citizens must be in accordance with the rule of law. This is a basic principle in the Indonesian legal system where law is the main guideline in all aspects of community life and government. Because a state of law according to Albert Venn Dicey is characterized by the existence of guaranteed protection of human rights and the interests of citizens.¹ Indonesia as a country of law shows its commitment to providing guarantees and protection of Human Rights (HAM) through its constitution starting from Article 28A-Article 28J of the 1945 Constitution of the Republic of Indonesia.²

Theoretically, human rights are rights inherent in humans that are natural and fundamental as a gift from God that must be respected, guarded and protected. The essence of human rights itself is an effort to maintain the safety of human existence as a whole through a balancing action between individual interests and public interests. Likewise, efforts to respect, protect and uphold human rights are a shared obligation and responsibility between individuals, the government (government apparatus, both civil and military) and the state.³

Basically, the discussion related to human rights will be mutually attached between rights and obligations. Therefore, in addition to human rights, there are also obligations that must be carried out in order to implement or uphold human rights. In using human rights, we are obliged to pay attention to, respect and appreciate the basic rights of others, awareness of human rights, self-esteem, dignity and human dignity that have existed since humans were born and are natural rights inherent in humans.⁴

The implementation of commitment in protecting human rights in Indonesia can then be seen from the beginning of the establishment of the National Human Rights Commission (Komnas HAM) through Presidential Decree Number 50 of 1993 concerning the National Human Rights Commission. Since 1999, the existence of Komnas HAM has been based on the Law, namely Law Number 39 of 1999 which also stipulates the existence, objectives, functions, membership, principles, completeness and duties and authorities of Komnas HAM. In order to achieve its objectives, Komnas HAM also uses various references to instruments related to human rights, both national and international.

If we look more broadly, we will find many legal instruments that already exist in Indonesia related to efforts to fulfill human rights for all elements of society. This can be explained as follows:

¹ La Ode Yustamin dan Risma Yulestari, "Optimalisasi Perlindungan Hak Asasi Manusia Pada Rancangan Undang-Undang Perampasan Aset Dalam Penanganan Tindak Pidana Ekonomi," *Jurnal Hukum Judicatum* 2, no. 1 (2024): 1–20.

² See the 1945 Constitution of the Republic of Indonesia.

³ A Bazar Harapan dan Nawangsih Sutardi, *Hak Asasi Manusia Dan Hukumnya* (Jakarta: CV. Yani's, 2006).

⁴ Ibid.

1. The 1945 Constitution and its amendments;
2. MPR Decree No. XVII/MPR/1998;
3. Law No. 39 of 1999 concerning Human Rights;
4. Law No. 26 of 2000 concerning the Human Rights Court;
5. Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination;
6. Law No. 7 of 2012 concerning Handling of Social Conflict; and
7. Other relevant national laws and regulations.

Moreover, at the international level, the Republic of Indonesia has ratified several conventions related to efforts to protect and fulfill human rights as can be seen in the explanation below:

1. UN Charter 1945;
2. Universal Declaration of Human Rights 1948;
3. International Covenant on Civil and Political Rights;
4. International Covenant on Economic, Social and Cultural Rights;
5. Other international human rights instruments.⁵

The rules that are instruments in efforts to protect and fulfill human rights in Indonesia show the seriousness that the Indonesian State highly respects, recognizes, and wants to realize the fulfillment of human rights for its citizens. The existence of Komnas HAM is one manifestation of the State's seriousness in fulfilling and enforcing human rights in Indonesia. However, in its journey, Komnas HAM still tends to be passive in carrying out efforts to enforce human rights violations or monitoring efforts to fulfill and violate human rights that occur in Indonesia.

Komnas HAM is expected to become a *Constitutional Organ* that can resolve various *Constitutional Problems* in Indonesia. However, in its implementation, human rights violations are currently not carried out repressively but tend to be carried out through methods that appear to be legal. Human rights violations are currently carried out through a legislative process that represses rights in a subtle way (*softening rights violations*). This is a consequence of the friction between the interpretation of power and the power of interpretation. In this case, Komnas HAM acts as an investigation by reviewing the law, but unfortunately the results of this investigation, which are usually called recommendations, are often ignored by stakeholders. According to Enny Soeprapto, a member of Komnas HAM in 2002-2007, the separation of the functions of investigation and inquiry also

⁵ Komnas HAM, *Tentang Komnas Ham*, <https://www.komnasham.go.id/index.php/about/1/tentang-komnas-ham.html>, accessed on 05 October 2024.

causes the relationship between the two institutions to be disrupted in resolving cases of Human Rights Violations.⁶

In addition, there are still many problems that should be the authority of the National Human Rights Commission but have not received optimal results in their enforcement. Reflecting on the various problems surrounding the resolution of gross human rights violations. The important thing that must be stated honestly is that so far there has been a kind of vacuum. There are things that need to be fixed immediately in the framework of creating certainty in the aspect of resolving gross human rights violations. This certainty can be achieved if the existing regulations are able to break through the existing obstacles. Because the obstacles that have existed so far are, for the author, the position of the National Human Rights Commission is still very fragile. In its journey, it turns out that the roles of the National Human Rights Commission are still not considered capable of translating the public's will in the aspect of resolving gross human rights violations. This is because the authority held by the National Human Rights Commission is still very weak, because it only reaches the stage of providing recommendations that do not have legally binding force. For example, in the context of the authority of the National Human Rights Commission to investigate cases of gross human rights violations, where many cases of gross human rights violations that have been investigated by the National Human Rights Commission are actually hampered by the Attorney General's Office because they are not followed up with investigations. In this context, Komnas HAM is powerless to enforce the results of its investigation to be followed up.⁷

From the phenomena that occur, it shows that the role of Komnas HAM in enforcing human rights violations, Fulfillment and Protection of Human Rights for citizens is still far from the mandate of the Constitution and the Law on Human Rights. Referring to the provisions of Article 75 letters a and b of Law Number 39 of 1999 concerning Human Rights, it can be seen that the existence of Komnas HAM in Indonesia has the following objectives:⁸

- a. Develop conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, and the Charter of the United Nations, as well as the Universal Declaration of Human Rights; and
- b. Improving the protection and enforcement of human rights for the development of the whole Indonesian person and his/her ability to participate in various areas of life.

⁶ Alpases P O Sinaga dan Agus Riwanto, "Efektivitas Kewenangan Komisi Nasional Hak Asasi Manusia Terhadap Penyelesaian Pelanggaran Hak Asasi Manusia Yang Berat Di Indonesia," *Res Publica* 6, no. 3 (2022): 302.

⁷ Sholihin Bone, "Penataan Kewenangan Komisi Nasional Hak Asasi Manusia: Telaah Sistem Hukum," *Amanna Gappa* 29, no. 1 (2021): 17.

⁸ Article 75 of Law No. 39 of 1999 concerning Human Rights.

Furthermore, in order to realize the objectives of Komnas HAM, Komnas HAM has the function to carry out studies, research, counseling, monitoring, and mediation on human rights.⁹ So by looking at the phenomena that occur, it is clear that Komnas HAM in carrying out its authority is still far from the mandate of the law on human rights in Indonesia. On this basis, it is very interesting to discuss further in order to optimize Komnas HAM in carrying out its authority.

METHOD

The research that will be used is normative legal research. This means the activity of identifying legal problems, analyzing legal problems, conducting legal reasoning, analyzing the problems faced and then providing solutions to the problems, where the problems studied in this normative legal research are caused by the existence of problematic norms or rules either because of conflicts in the norms, the existence of unclear meaning in the norms, the existence of contradictions in the norms or the existence of legal vacuums.¹⁰

The approach method used in this study is the statute approach. This statute approach is an approach carried out by examining all laws and regulations related to the legal issue being handled.¹¹

DISCUSSION

The Existence of Komnas HAM in the Provisions of Legislation in Indonesia.

The early history of the emergence of human rights began with the birth of a democratic government system.¹² Indonesia as a country that uses a democratic system and is a country of law, then all forms of state administration in Indonesia must be based on applicable laws and no exception regarding human rights issues.¹³

As a country that upholds humanitarian values, human rights in Indonesia have been regulated as well as possible in order to create a good order of life. Without the formulation of the Law related to human rights, a country will find it difficult to achieve peace, prosperity, unity and oneness. Therefore, it is an obligation for a country to formulate a Law related to human rights (HAM).

Pancasila as the state ideology is a source of inspiration for human rights in Indonesia. In addition, Pancasila also highly upholds humanitarian values. The ideology of Pancasila is the main ideas or notions raised and formulated by Soekarno, Moh. Hatta, Moh Yamin, and others which became an ideology now

⁹ Article 76 paragraph 1 of Law No. 39 of 1999 concerning Human Rights

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta Timur: Prenadamedia Group, 2019).

¹¹ Ibid.

¹² Tim PUSLIT IAIN Jakarta, *Pendidikan Kewarganegaraan (Civic Education) Demokrasi, HAM Dan Masyarakat Madani* (Jakarta: IAIN Jakarta Press, 2000).

¹³ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia, 1997).

known as the Pancasila ideology. Ideology is used as the spearhead and becomes the soul and spirit that wants to realize the idea of justice.¹⁴

In essence, the concept of human rights in Indonesia stems from the Pancasila ideology. Stemming from the Pancasila Ideology means that the implementation of human rights must pay attention to the provisions that have been determined in the Pancasila ideology. This emphasizes that the implementation of human rights in Indonesia is not realized as freely as possible, but must pay attention to the provisions that have been determined.¹⁵

Theologically, human rights can be traced through the relationship between humans and God or between creatures and their creator. Basically, no human is higher than another human because all humans are essentially the same and have the same rights and status without any differences.¹⁶

The Pancasila ideology encourages society to view the dynamics of the reality of national life. Indonesian leaders have tried to formulate law as a regulation of human actions by legitimate power, not only in decisions (formulated regulations), but also in their implementation.¹⁷

The government has made efforts to realize social justice for all Indonesian people and to ensure the fulfillment of human rights. Among them is by forming new state institutions and government institutions. Among the institutions referred to is the National Human Rights Commission (Komnas HAM). Komnas HAM was established on June 7, 1993 with Presidential Decree (Kep.Pres) Number 50 of 1993.¹⁸ The reason for the establishment of Komnas HAM is seen that in the consideration section, the government has realized that in fact humans as creations of God Almighty have basic rights to develop themselves personally, their roles, and their contributions to society. In addition, the government during the New Order era has recognized that the Indonesian nation as part of the international community, respects the United Nations Charter and the Universal Declaration of Human Rights of the United Nations, so it is deemed necessary to establish Komnas HAM as an institution that will handle human rights in the Republic of Indonesia.

Through Presidential Decree No. 50 of 1993, it is clear that the purpose of establishing Komnas HAM is to help develop conditions conducive to the implementation of human rights in Indonesia in accordance with Pancasila, the

¹⁴ A. Gunawan Setiardi, *Hak-Hak Asasi Manusia Berdasarkan Ideologi Pancasila*. (Yogyakarta: Kanisius, 1993).

¹⁵ Dicky Febrian Ceswara dan Puji Wiyatno, "Implementasi Nilai Hak Asasi Manusia Dalam Sila Pancasila," *Lex Scientia Law Review* 2 (2018).

¹⁶ Jimly Asshidiqie, *Hukum Tata Negara & Pilar-Pilar Demokrasi* (Jakarta: Sinar Grafika, 2012). H 199

¹⁷ Setiardi, *Hak-Hak Asasi Manusia Berdasarkan Ideologi Pancasila*.

¹⁸ Galang Asmara, "Eksistensi Komnas Ham Ditinjau Dari Hukum Ketatanegaraan Republik Indonesia," *PERSPEKTIF* VII, no. 4 (2002).

1945 Constitution, the UN Charter, and the Universal Declaration of Human Rights. In addition, Komnas HAM was established for the purpose of improving human rights protection in order to support the realization of national development. Based on the Presidential Decree, Komnas HAM carries out various activities, including disseminating national and international insights on human rights to the wider community, reviewing various human rights protection instruments from the UN and providing advice on the possibility of access and ratification, as well as carrying out monitoring, investigation and promotion of human rights protection.¹⁹

The establishment of Komnas HAM through Presidential Decree No. 50 of 1993 certainly provides positive things for the people and the constitutional system of the Republic of Indonesia. Furthermore, in 1998 through the People's Consultative Assembly issued the Decree of the People's Consultative Assembly Number XVII / MPR / 1998 concerning Human Rights. With the issuance of the MPR Decree, it certainly strengthens the position of Komnas HAM in making efforts to Fulfill and Respect Human Rights in Indonesia.

However, looking at its history, Komnas HAM, which was originally a government institution (*bestuur organen*), has recently been upgraded to an independent state institution with the same status as state institutions with the enactment of the Law on Human Rights (Law Number 39 of 1999). This is emphasized in the provisions of Article 1 number 7, which among other things states as follows: "*Komnas HAM is an independent institution with the same status as other state institutions whose function is to carry out studies , counseling, monitoring and mediation of human rights.*"

Looking at its position, then Komnas HAM according to the provisions of Article 76 paragraph 3 of Law No. 39 of 1999 it is seen that "*Komnas HAM is domiciled in the Capital City of the Republic of Indonesia*". However, in the next provisions, Komnas HAM is allowed to form Komnas HAM representatives in the regions. If viewed from the composition of the filling of Komnas HAM membership, then according to the provisions of Article 76 paragraph 2 it states that "*Komnas HAM consists of community figures who are professional, dedicated and have high integrity, live the ideals of a state of law and a welfare state that is based on justice, respects human rights and basic human obligations.*"

Law No. 39 of 1999 concerning Human Rights is an instrument for the existence of Komnas HAM in Indonesia. However, if we look at the history of the Indonesian nation, we can see that the Republic of Indonesia has amended the 1945 Constitution four times. Matters related to Human Rights are more specifically regulated in the second amendment to the 1945 Constitution, namely in 2000. This means that since 1999 the state has paid more serious attention to the fulfillment of

¹⁹ Sri Hastuti Puspitasari, "Komnas HAM Indonesia Kedudukan Dan Perannya Dalam Struktur Ketatanegaraan Indonesia," *Jurnal Hukum* 9, no. 21 (2022). pp. 103-104.

human rights. Although at that time, regulations related to human rights had not been included in the provisions of the 1945 Constitution, Indonesia has ratified conventions related to human rights. This requires Indonesia to uphold human rights.

In 2000, developments related to efforts to protect, respect and fulfill human rights have increased rapidly. This is proven by the presence of Law Number 26 of 2000 concerning the Human Rights Court as the scope of the judicial institution that will decide on cases of human rights violations in Indonesia. Since the existence of the Human Rights Court, Komnas HAM has had a role in investigating human rights violations. As stated in Article 18 paragraph 1 of Law No. 26 of 2000 which states " *Investigations of serious human rights violations are carried out by the National Human Rights Commission*" . So that there are duties and functions of Komnas HAM related to handling serious human rights violations.

The dynamics that color the journey of Komnas HAM in efforts to protect, respect and fulfill human rights show that Komnas HAM as an institution is given authority by law and its existence is recognized by law. It can be seen that the basis for the emergence of Komnas HAM which was initially only regulated through Presidential Decree No. 50 of 1993 has undergone development and change. Currently, Komnas HAM is specifically regulated in the provisions of Law No. 39 of 1999 concerning Human Rights. Although Komnas HAM is not regulated by a separate law, the existence of Komnas HAM is constitutionally recognized in the constitutional system of the Republic of Indonesia.

Optimizing the Authority of the National Human Rights Commission in Fulfilling Human Rights in Indonesia

The National Human Rights Commission (Komnas HAM) as a national human rights institution is an independent institution that functions to provide protection and enforcement of human rights. In order to strengthen and optimize the authority of Komnas HAM as an institution that fulfills human rights in Indonesia, its duties and functions must always be strengthened in the Indonesian state system.²⁰ The existence of Komnas HAM's authority in Indonesia is regulated by Law Number 39 of 1999 concerning Human Rights to achieve the goals of national and state life as mandated by the opening of the 1945 Constitution, paragraph 4 (four), namely "To protect all Indonesian people and all Indonesian territory, to advance public welfare, to educate the nation's life, to participate in implementing world order based on independence, eternal peace and social justice. Therefore, increasing the protection and enforcement of human rights in Indonesia as the purpose of Komnas HAM is part of achieving the goals of the state. To protect

²⁰ Rommy Patra, "Penguatan Eksistensi Kelembagaan Komnas HAM Dalam Sistem Ketatanegaraan Indonesia," *MMH* 41, no. 2 (2012): 209.

all Indonesian people and all Indonesian territory, to advance public welfare, to educate the nation's life, to participate in implementing world order based on independence, eternal peace and justice is part of human rights itself that needs to be protected and upheld.²¹

In its development, Komnas HAM in guaranteeing the enforcement and protection of human rights is not directly proportional to the expected conditions, and is not even in line with *the mandate* and philosophical objectives of the legislation on human rights. Komnas HAM is present as a form of state responsibility, as conveyed by Mattio Pinto " *The State is under an obligation to provide the victims with an effective remedy. The duty to prosecute and punish gross human rights abuses may no longer be conceived as a due diligence obligation, but as mandatory in all circumstances* ". The state has an obligation to provide justice for the victims and their families. This obligation makes Komnas HAM important, because it is an obligation in implementing humanitarian values. However, until now the existence of Komnas HAM has not been able to provide a major influence in the protection and advancement of human rights in Indonesia.²²

The guarantee of human rights protection is manifested in Law Number 39 of 1999 concerning Human Rights which is then enforced through the National Human Rights Commission institution. However, *a quo* still shows many cases of human rights violations that have not been resolved. For example, starting from the Tanjung Priok incident, the Semanggi I Tragedy, the Semanggi II Tragedy, the Wasior and Wamena Tragedy, to the Paniai incident that just happened in 2014. The unresolved cases of human rights violations that occurred in Indonesia, of course, cannot be separated from the resolution mechanism that still leaves many problems. The problem is mainly triggered by the weak authority of the National Human Rights Commission in Indonesia.²³

Referring to the provisions of Article 75 letters (a) and (b) Komnas HAM was established with the following aims: (a) " to develop conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, and the Charter of the United Nations, as well as the Universal Declaration of Human Rights"; and (b) "to increase the protection and enforcement

²¹ Kadoni Siringoringo dan Louise Theresia, "Penyelidikan Kejahatan Kemanusiaan: Kajian Yuridis Kewenangan Komisi Nasional Hak Asasi Manusia," *Palangka Law Review* 1, no. 2 (2021): 119.

²² Fiddy Firmandiaz dan Jadmiko Anom Husodo, "Penyelesaian Kasus Pelanggaran Hak Asasi Manusia Berat Di Indonesia Oleh Komisi Nasional Hak Asasi Manusia Ditinjau Dari Kewenangannya (Studi Kasus Timor-Timur)," *Res Publica* 4, no. 1 (2020): 98.

²³ Hesti Zahrona Nurul R. Felix Juanardo W & Sang Ayu Made Tamara V.P.E.P, "Integrated Settlement Mechanism Sebagai Upaya Mewujudkan State Responsibility Melalui Rekonstruksi Komnas Ham Dan Pengadilan HAM Di Indonesia," *Mimbar Jurnal Hukum* 1, no. 1 (n.d.): 12020.

of human rights for the development of the Indonesian human personality as a whole and its ability to participate in various areas of life”.

Then, in the continuation, it is stated in the provisions of Article 76 paragraph (1) that: "To achieve its objectives, Komnas HAM carries out the functions of assessment, research, outreach, monitoring and mediation regarding human rights". As explained in several articles regarding the functions of Komnas HAM in carrying out its duties and authorities, including the following.

1. The authority of the National Human Rights Commission in conducting studies and research
 - a) review and research of various international human rights instruments with the aim of providing suggestions regarding possible accession and/or ratification;
 - b) review and research of various laws and regulations to provide recommendations regarding the formation, amendment and revocation of laws and regulations relating to human rights;
 - c) publication of study and research results;
 - d) literature studies, field studies and comparative studies in other countries regarding human rights;
 - e) discussion of various issues related to the protection, enforcement and promotion of human rights; and
 - f) cooperation in studies and research with organizations, institutions or other parties, both at national, regional and international levels in the field of human rights.
2. The authority of the National Human Rights Commission in conducting counseling
 - a) dissemination of insight into human rights to the Indonesian people;
 - b) efforts to increase public awareness of human rights through formal and non-formal educational institutions and various other groups; and
 - c) cooperation with organizations, institutions or other parties, both at national, regional and international levels in the field of human rights.
3. The Authority of the National Human Rights Commission in Carrying Out Monitoring
 - a) observation of the implementation of human rights and preparation of reports on the results of these observations;
 - b) investigation and examination of events that arise in society which based on their nature or scope are reasonably suspected of violating human rights;
 - c) summons to the complainant or victim or the party being questioned to obtain information and hear it;

- d) summoning witnesses to be asked to hear their testimony, and requesting the complaining witness to submit the necessary evidence;
 - e) review of the scene and other places deemed necessary;
 - f) summons of related parties to provide written information or submit required documents in accordance with the original with the approval of the Chief Justice;
 - g) local inspection of houses, yards, buildings and other places occupied or owned by certain parties with the approval of the Chief Justice; and
 - h) giving an opinion based on the approval of the Chief Justice regarding a particular case that is in the trial process, if in the case there is a violation of human rights in a public matter and the proceedings are examined by the court, then the opinion of the National Human Rights Commission must be notified by the judge to the parties.
4. The Authority of the National Human Rights Commission in Conducting Mediation
- a) peace between the two parties;
 - b) settlement of cases through consultation, negotiation, mediation, conciliation and expert assessment;
 - c) providing advice to the parties to resolve disputes through the courts;
 - d) submission of recommendations on a case of human rights violations to the Government for follow-up resolution; and
 - e) submission of recommendations on a case of human rights violations to the People's Representative Council of the Republic of Indonesia for follow-up.²⁴

However, currently there has been additional authority for Komnas HAM. Since the enactment of Law No. 26 of 2000 concerning Human Rights Courts, Komnas HAM has had the authority to investigate serious human rights violations. In carrying out this investigation, Komnas HAM can form an ad hoc team consisting of the Human Rights Commission and community officials. Not only that, since the enactment of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, Komnas HAM has received additional authority in the form of supervision. Supervision is a series of actions carried out by Komnas HAM with the aim of evaluating government policies, both central and regional, which are carried out periodically or incidentally by monitoring, looking for facts, assessing

²⁴ *Undang-Undang tentang Hak Asasi Manusia*, UU No. 39 of 1999, LN No. 165 of 1999, TLN No. 3886. Articles 75, 76, and 89.

in order to find and discover whether there is racial and ethnic discrimination which is followed up with recommendations.²⁵

Through the mandate of the above Human Rights Law, Komnas HAM shows the institutional weakness of the state because Komnas HAM cannot take action against human rights violations. Nowadays, human rights violations are getting worse, conflicts over agriculture and natural resources, and no less important is the issue of intolerance, discrimination, and violent extremism. This can disrupt our economic and political development now and in the future,²⁶ not to mention the development of these challenges is not balanced with the authority of the Komnas HAM of the Republic of Indonesia which only has narrow authority, namely to supervise, mediate, and provide recommendations, there is no action that can be taken by Komnas HAM because it is limited as written in the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. The regulation of duties and authority of this institution is only moral in nature to build the personality of humanity for citizens of the Republic of Indonesia. In line with the opinion of Suparman Marzuki who stated that there were doubts about the independence of Komnas HAM as a strong and independent institution in enforcing human rights in Indonesia because the establishment was more based on Indonesia's image in the international world which would follow the Vienna Conference in 1993, and the formal mechanism for establishing Komnas HAM was entirely carried out by the government through the Ministry of Foreign Affairs which at that time was always the main fortress when facing international pressure, related to issues regarding human rights violations committed by the Soeharto regime.²⁷

Comparing the authority of Komnas HAM based on the Human Rights Law, with the problems of enforcing and protecting human rights, as well as conflicts of human rights violations today, through the Komnas HAM website, Komnas HAM itself shows its performance in enforcing and protecting human rights based on its authority in conducting research, studies, cooperation and other activities in the context of enforcing and protecting human rights in Indonesia²⁸, which have been carried out routinely with various methods, although until now forms of human rights violations in Indonesia are still widely found. This is of course due to several

²⁵ Komnas HAM, "Tentang Komnas Ham," <https://www.komnasham.go.id/index.php/about/1/tentang-komnas-ham.html>, diakses pada tanggal 04 November 2024..

²⁶ Komnas HAM Republik Indonesia, *Hari HAM Sedunia, Menanti Aksi Pemerintah RI Penuhi Hak Dasar Bangsa*, 2019, <https://www.komnasham.go.id/index.php/news/2019/12/10/1275/hari-ham-sedunia-menanti-aksi-pemerintah-ri-penuhi-hak-dasar-bangsa.html>, accessed on November 4, 2024.

²⁷ Duta Setiawan Sumolang, "Kajian Yuridis Terhadap Kedudukan Komnas HAM Dalam Sistem Ketatanegaraan Indonesia," *Lex Administratum* 7, no. 1 (2019): 88.

²⁸ Komnas HAM, "About Komnas HAM," <https://www.komnasham.go.id/index.php/about/1/tentang-komnas-ham.html>, accessed on November 04, 2024.

political factors and other factors that influence the process of enforcing law and human rights in Indonesia, also playing a role in the case or case, as well as several procedures and regulations regarding the implementation of human rights courts that are inadequate. For example, in the case of gross human rights violations, in procedural law it is impossible to adequately reveal, bring suspects, let alone prove that the defendant is responsible for the occurrence of human rights violations. Then in the human rights court, there are differences of opinion between Komnas HAM as an investigator and the Attorney General's Office as an investigator in terms of formal requirements and conclusions regarding the existence or absence of gross human rights violations. This condition results in a bottleneck from the investigation stage to the investigation. So when human rights principles are not used by the courts, it is certain that society, both individuals and groups, will experience human rights violations.²⁹

In contrast to the description above, Prof. Jimly Asshidiqie argues that Komnas HAM is the highest state institution in enforcing human rights, so all state agencies or duties related to human rights can be integrated into Komnas HAM.³⁰ So through this research, it is indeed felt very important to optimize the authority of Komnas HAM in the context of enforcing and protecting human rights in Indonesia in the past, present, and challenges in the future, as mandated by the Human Rights Law, Komnas HAM has the authority to conduct studies, research, counseling, monitoring and mediation.

CONCLUSION

The existence and position of Komnas HAM are regulated in the provisions of Law No. 39 of 1999 concerning Human Rights. Previously, the regulation related to the existence of Komnas HAM as an independent institution that focuses more on handling human rights issues was regulated in the provisions of Presidential Decree No. 50 of 1993 concerning Komnas HAM. However, over time, there has been a strengthening of regulations regarding the existence of Komnas HAM which has been directly regulated in Law No. 39 of 1999 concerning Human Rights. So constitutionally, the existence of Komnas HAM in the state system in Indonesia is justified and does not conflict with applicable laws and regulations.

Komnas HAM as an independent institution has a significant role in upholding and protecting human rights, through human rights law the authority to

²⁹ National Human Rights Commission of the Republic of Indonesia, *Challenges of the National Human Rights Commission in the Practice of Human Rights Courts in Indonesia*, 2023, <https://www.komnasham.go.id/index.php/news/2023/12/13/2464/tantangan-komnas-ham-dalam-praktik-pengadilan-ham-di-indonesia.html>.

³⁰ Hukum Online, "Komnas HAM Needs Strengthening of Authority," 2012, <https://www.hukumonline.com/berita/a/komnas-ham-butuh-penguatan-kewenangan-lt4f7d11402f7ae/>, accessed on November 04, 2024.

carry out studies, research, counseling, monitoring and mediation. Seeing developments, Komnas HAM also has the authority to investigate cases of serious human rights violations based on the provisions of Law no. 26 of 2000 concerning Human Rights Courts. Moreover, since the enactment of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, Komnas HAM has received additional authority in the form of supervision. This means that by increasing the authority it has, it is necessary to optimize the authority carried out by Komnas HAM. There are still many violations and lack of respect for human rights in Indonesia, which shows that Komnas HAM, as an independent institution that focuses on human rights issues, has not exercised its authority optimally. So efforts need to be made to ensure that the authority given to Komnas HAM can be optimally implemented.

REFERENCES

- Alpases P O Sinaga dan Agus Riwanto. "Efektivitas Kewenangan Komisi Nasional Hak Asasi Manusia Terhadap Penyelesaian Pelanggaran Hak Asasi Manusia Yang Berat Di Indonesia." *Res Publica* 6, no. 3 (2022): 302.
- Asmara, Galang. "Eksistensi Komnas Ham Ditinjau Dari Hukum Ketatanegaraan Republik Indonesia." *PERSPEKTIF VII*, no. 4 (2002).
- Asshidiqie, Jimly. *Hukum Tata Negara & Pilar-Pilar Demokrasi*. Jakarta: Sinar Grafika, 2012.
- Bone, Sholihin. "Penataan Kewenangan Komisi Nasional Hak Asasi Manusia:Telaah Sistem Hukum." *Amanna Gappa* 29, no. 1 (2021): 17.
- Budiardjo, Miriam. *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia, 1997.
- Fiddy Firmandiaz dan Jadmiko Anom Husodo. "Penyelesaian Kasus Pelanggaran Hak Asasi Manusia Berat Di Indonesia Oleh Komisi Nasional Hak Asasi Manusia Ditinjau Dari Kewenangannya (Studi Kasus Timor-Timur)." *Res Publica* 4, no. 1 (2020): 98.
- HAM, Komnas. "Tentang Komnas Ham." Last modified 2024. <https://www.komnasham.go.id/index.php/about/1/tentang-komnas-ham.html>.
- Indonesia, Komnas HAM Republik. *Hari HAM Sedunia, Menanti Aksi Pemerintah RI Penuhi Hak Dasar Bangsa*, 2019. <https://www.komnasham.go.id/index.php/news/2019/12/10/1275/hari-ham-sedunia-menanti-aksi-pemerintah-ri-penuhi-hak-dasar-bangsa.html>, .
- . *Tantangan Komnas HAM Dalam Praktik Pengadilan HAM Di Indonesia*, 2023. <https://www.komnasham.go.id/index.php/news/2023/12/13/2464/tantangan-komnas-ham-dalam-praktik-pengadilan-ham-di-indonesia.html>.
- Jakarta, Tim PUSLIT IAIN. *Pendidikan Kewarganegaraan (Civic Education) Demokrasi, HAM Dan Masyarakat Madani*. Jakarta: IAIN Jakarta Press, 2000.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta Timur: Prenadamedia Group,

2019.

- Online, Hukum. "Komnas HAM Butuh Penguatan Kewenangan," 2012. <https://www.hukumonline.com/berita/a/komnas-ham-butuh-penguatan-kewenangan-1t4f7d11402f7ae/>.
- Patra, Rommy. "Penguatan Eksistensi Kelembagaan Komnas HAM Dalam Sistem Ketatanegaraan Indonesia." *MMH* 41, no. 2 (2012): 209.
- Puspitasari, Sri Hastuti. "Komnas HAM Indonesia Kedudukan Dan Perannya Dalam Struktur Ketatanegaraan Indonesia." *Jurnal Hukum* 9, no. 21 (2022).
- Setiardja, A. Gunawan. *Hak-Hak Asasi Manusia Berdasarkan Ideologi Pancasila*. Yogyakarta: Kanisius, 1993.
- Sumolang, Duta Setiawan. "Kajian Yuridis Terhadap Kedudukan Komnas HAM Dalam Sistem Ketatanegaraan Indonesia." *Lex Administratum* 7, no. 1 (2019): 88.
- Sutardi, A Bazar Harapan dan Nawangsih. *Hak Asasi Manusia Dan Hukumnya*. Jakarta: CV. Yani's, 2006.
- Theresia, Kadoni Siringoringo dan Louise. "Penyelidikan Kejahatan Kemanusiaan: Kajian Yuridis Kewenangan Komisi Nasional Hak Asasi Manusia." *Palangka Law Review* 1, no. 2 (2021): 119.
- V.P.E.P, Hesti Zahrona Nurul R. Felix Juanardo W & Sang Ayu Made Tamara. "Integrated Settlement Mechanism Sebagai Upaya Mewujudkan State Responsibility Melalui Rekonstruksi Komnas Ham Dan Pengadilan HAM Di Indonesia." *Mimbar Jurnal Hukum* 1, no. 1 (n.d.): 12020.
- Wiyatno, Dicky Febrian Ceswara dan Puji. "Implementasi Nilai Hak Asasi Manusia Dalam Sila Pancasila." *Lex Scientia Law Review* 2 (2018).
- Yulestari, La Ode Yustamin dan Risma. "Optimalisasi Perlindungan Hak Asasi Manusia Pada Rancangan Undang-Undang Perampasan Aset Dalam Penanganan Tindak Pidana Ekonomi." *Jurnal Hukum Judicatum* 2, no. 1 (2024): 1–20.