

## Instrument for Protection and Enforcement of Human Rights in Indonesia

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Article	Abstract
<p><b>How to cite:</b> Rizky Ahadyan Ardiansyah &amp; Saiful Rizal, 'Instrument for Protection and Enforcement of Human Rights in Indonesia' (2023) Vol. 4 No. 3 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p><b>DOI:</b> 10.35719/rch.v4i3.304</p> <p><b>Article History:</b> Submitted: 15/10/2023 Reviewed: 20/10/2023 Revised: 10/12/2023 Accepted: 30/12/2023</p> <p><b>ISSN:</b> 2723-0406 (printed) <b>E-ISSN:</b> 2775-5304 (online)</p>	<p>Human rights are an inseparable component of human life, both in the social, economic, religious, political and even educational fields, because these rights are an integral part of every human being since birth. In addition, the context of the discussion of Human Rights cannot be separated from the scope of the state, because it has become an obligation for a country to guarantee and protect this right under any conditions, Indonesia is also one of the countries that provide guarantees and protection for every right. human rights, although in reality its implementation can still be categorized as not conducive, because this can be seen in the development of cases that allude to the issue of upholding human rights in Indonesia. During the reform era in Indonesia, there were several amendments to the 1945 Constitution. These amendments aimed to improve and strengthen the democratic system and protect human rights. In 1999, the first amendment was made to the 1945 Constitution. This research aims to find out the basic legal concept of protecting and enforcing human rights law in Indonesia, besides that it also aims to increase public insight into the importance of human rights values in the context of state life. In this research the author uses a normative approach by examining several materials or literature data which also discusses the issue of basic legal concepts of protection and enforcement.</p> <p><b>Keywords:</b> <i>Human Rights, Protection, Law Enforcement.</i></p> <p><b>Abstrak</b> HAM merupakan sebuah komponen yang tidak bisa terpisahkan dari kehidupan manusia baik di dalam ranah bidang sosial, ekonomi, agama, politik bahkan pendidikan, sebab hak ini merupakan satu kesatuan yang memang sejak lahir dimiliki oleh setiap manusia. Selain itu, konteks pembahasan HAM juga tidak lepas dari ruang lingkup dalam bernegara, sebab sudah menjadi sebuah kewajiban bagi suatu negara untuk menjamin serta melindungi hak ini dalam kondisi apapun, Indonesia pun termasuk negara salah satu negara yang memberikan jaminan serta perlindungan atas setiap HAM, meskipun dalam realita pelaksanaannya masih bisa dikategorikan belum kondusif, sebab hal ini terlihat pada perkembangan kasus-kasus yang menyinggung persoalan penegakan HAM di Indonesia. Selama era reformasi di Indonesia, terjadi beberapa amandemen terhadap Undang- Undang Dasar 1945. Amandemen ini bertujuan untuk memperbaiki dan memperkuat sistem demokrasi serta melindungi hak-hak asasi manusia. Pada tahun 1999, dilakukan amandemen pertama terhadap UUD 1945. Penelitian ini bertujuan untuk mengetahui bagaimana konsep dasar hukum perlindungan dan penegakan hukum HAM di Indonesia, selain itu juga bertujuan untuk menambah wawasan publik akan pentingnya nilai-nilai HAM dalam konteks kehidupan bernegara. Di dalam penelitian ini penulis menggunakan pendekatan normatif dengan cara meneliti beberapa bahan-bahan atau data kepustakaan yang juga membahas persoalan</p>

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konsep dasar hukum perlindungan dan penegakan HAM di Indonesia.

**Kata Kunci:** *Hak Asasi Manusia, Perlindungan, Penegakan Hukum.*

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## **Introduction**

Human Rights (HAM) issues will correlate with state life because the context of human rights is also part of the state's important duty to provide guarantees and protection in its implementation. Indonesia is a country that also highly upholds human rights values; this can be seen in the history of the development of protection and enforcement in Indonesia, which comprehensively experiences several developments every year. Several issues that touch on human rights often occur yearly in Indonesia. This issue is, of course, inseparable from issues that also touch on the development of the political situation and law enforcement in Indonesia, bearing in mind that there are indeed problems that touch on human rights issues. Vulnerability occurs when the country faces law enforcement problems and is experiencing a decline in domestic political stability.<sup>1</sup>

The term human rights is indeed familiar to our ears. Of course, many of us already know what the meaning of human rights is, but not all of the public knows the broad meaning contained in the womb of human rights itself, even though the definition of human rights contains several values. Human rights are basic rights possessed by every human being; in this case, these rights are innate from birth; in other words, human rights are a nature that has been outlined in every individual, which concerns human dignity and honour. On the other hand, human rights are also the power or authority of every human being over something, where the nature of this right is more directed towards demands that must be fulfilled and protected in the context of any field, whether social, political, economic, educational or several other fields.

According to Dudi, human rights are a right that is inherent in humans from birth; without this right, humans cannot live like humans in general. Apart from that, Dudi also expressed several important points related to the meaning of human rights. The important points expressed by Dudi were as follows:

- (1) Human rights are an innate nature from birth
- (2) Human rights are God's gift given to every human being
- (3) Human rights have an essence that requires every human individual to respect, protect and uphold each other's human rights.<sup>2</sup>

Based on the explanation above, it can be concluded that human rights are a component that is inherent in every human being from birth; where this right is owned by every human being, which is intended so that every individual human being has the same proportionality as other humans, the proportionality in question is justice. And equality of every human being in the continuation of life. On the other hand, human rights are a gift from God given to every human being. Therefore, the essence of human rights contains the meaning that every human being has the right to treatment to receive protection, honour and respect in any field or condition.

The occurrence of human rights problems does not always make the state the subject that is held accountable; generally, human rights problems can also arise from human rights

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<sup>1</sup> Johan Jasin, Urgensi Membangun Budaya Hukum Dalam Rangka Mengefektifkan Penegakan Hukum, Universitas 45: Jurnal Ilmiah Hukum dan Pengembangan Masyarakat, Vol. 5, No. 2. (2017), 134.

<sup>2</sup> Dudi, C. *Pengantar Pendidikan Kewarganegaraan*. Bandung: Insan Mandiri (2009), 34.

obligations that are not implemented. Still, we often encounter problems between individuals involved in human rights cases caused by one of them. Some violate their basic obligations as human beings. Even though these cases often occur in the environment around us, the conditions for the development of human rights protection and enforcement in Indonesia can be said to be better because the government has issued several human rights legal regulations through several legislative products, in addition to that, institutions have also been established. Which is specifically focused on dealing with issues of human rights violations.<sup>3</sup>

Indonesia is a rule-of-law country. Therefore, Indonesia should be an example for other countries in enforcing existing rules. Guarantees of protection are also part of the law; if we do not receive guarantees of legal protection, our legal rights will not be recognised. Guarantees of legal protection need to be given more attention and implemented by the 1945 Constitution.<sup>4</sup>

Throughout the ages, the development of the protection and enforcement of human rights in Indonesia has indeed experienced prolonged ups and downs of change. Since the beginning of Indonesian independence, we often encounter all forms of problems regarding the protection and enforcement of human rights, especially problems that manifest acts that violate or injure human rights values. From the beginning of the old order, the new order until the reform era, a series of cases that touched on human rights issues seemed to be nothing new in the development of the Indonesian nation in providing protection and enforcement of human rights law.

Starting from the Old Order period, various series of cases that offended human rights have also occurred in the early era of the independence era of the Indonesian nation, for example, the case of the G 30 S PKI in this tragedy which killed seven high-ranking military officers, apart from this tragedy there were also several other tragedies which also touches on human rights issues.<sup>5</sup> Continuing in the New Order era, under President Soeharto's leadership, there have also been many bloody events that have made the state a subject that must be held accountable because during this leadership period, Indonesia experienced a crisis in the political policies of the rulers who were considered authoritarian or arbitrary in carrying out their functions. His position.

One example of a case of human rights violations that occurred during the New Order era was the disappearance of young activists who were fighting for the aspirations of the people amidst the shackles of the Indonesian government system, which tends to be repressive towards the actions of young activists who are considered to endanger the position of the rulers. In this regime, there are similar cases related to the explanation above, namely the loss of the lives of young activists, namely Marsinah (an activist fighting for workers' aspirations), Munir (a human rights activist), Wiji Thukul (a human rights activist and also a poet) and many other tragedies of human rights violations. Continuing in the reform era, the birth of reform is not something that promises that incidents of human rights violations will not be repeated or will not happen again, in this era human rights violations also often occur and it cannot be denied that this is true.<sup>6</sup>

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<sup>3</sup> Sunarso, *Pendidikan HAM*, Surakarta, (Solo: Cv. Indotama Solo, 2020), 59 – 60.

<sup>4</sup> Lev Daniel. S. 1978 "Judicial Authority and the Struggle For an Indonesian Rechtsstaat Law & Society Review. Vol 13. No 1, 37-71.

<sup>5</sup> Kadek Yopi Sri Wahyuni, "Tinjauan Hukum Internasional Terhadap Terjadinya Pelanggaran HAM Di Indonesia", Universitas Pendidikan Ganesha Singaraja: Jurnal Locus Delicti, Vol. 3, No. 1 (2022), 27.

<sup>6</sup> Ibid., 30.

## **Research Methods**

This research presents knowledge in the form of descriptive juridical analysis, which aims to provide a detailed picture related to the basic concepts of the position and protection of human rights law in Indonesia. The materials used as a reference for this research are juridical literature data, which is then collected and analyzed normatively and juridically, and later presented in descriptive form.

## **Results and Discussion**

### **Existence Confession Human Right in Indonesia**

Indonesia is one of many other countries that highly uphold humanitarian values and principles, even though in the history of the development of the protection and enforcement of human rights in Indonesia, it has experienced bitter times starting after the beginning of independence until after the current reform era. It cannot be denied that something similar has happened in the country we love, starting from President Soekarno's time until President Ir's leadership. Joko Widodo, a series of cases involving human rights issues have indeed occurred, and of course, this incident is not forgotten in the dark history of the Indonesian nation in implementing the protection and enforcement of human rights.

As a rule of law, the Indonesian nation should uphold human values by realising conducive implementation of the protection and enforcement of human rights law; this has become the goal of an independent Indonesian nation as stated in the preamble to the Constitution of the Republic of Indonesia, namely:

1. Public welfare
2. Enrich the life of a nation
3. Implementing world order<sup>7</sup>

These three pillars of the main goals of the Indonesian nation reflect that the Indonesian nation has an important mission to provide support for human rights values in the form of implementing protection and law enforcement related to human rights. In the framework of its efforts, the Indonesian government has implemented the protection of human values, several policies. The Indonesian government has begun to realise the goal of establishing a legal umbrella that protects and acts as a shield in implementing law enforcement against human values. The Indonesian Government has taken several efforts to support the realisation of conducive implementation of human rights protection and enforcement, namely:

- (1) Establishment of the National Human Rights Commission, the National Commission on Anti-Violence Against Women (Komnas Perempuan), the Witness and Victim Protection Agency (LPSK) and the Indonesian Child Protection Commission (KPAI)
- (2) Establishment of Law Number 39 of 1999 concerning Human Rights
- (3) Stipulation of Law Number 26 of 2000 concerning Human Rights Courts
- (4) ad hoc Human Rights Court
- (5) The establishment of the National Truth and Reconciliation Commission as an alternative non- litigation route for resolving disputes in cases of human rights violations

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<sup>7</sup> Constitution of the Republic of Indonesia 1945 Aline 4.

- (6) There are efforts by the Indonesian Government to ratify various international conventions related to human rights values.<sup>8</sup>

The active role of the Indonesian government in the international arena has directly proven that the Indonesian nation has indeed tried to repair the dark history that has occurred in the past, where this dark history has brought the good name of the Indonesian nation into disrepute and is considered one of many countries. who have experienced the tragedy of serious human rights violations, of course this will have consequences for worsening bilateral and multilateral cooperative relations between the Indonesian people and other countries. Bearing in mind that initially human rights in Indonesia were only a paradigm of thought and did not appear simultaneously with the birth of the 1948 UN Human Rights Declaration, apart from that the human rights contained in the pre - amendment 1945 Constitution were not stated in a charter but were separate and scattered within several articles, the number is limited and short.<sup>9</sup>

### **Indonesian Constitution as Juridical Basis Protection Human Right**

The constitution is the constitution of the Indonesian nation, which has a high position, in fact there is no power equal in position to the 1945 Constitution, even though the highest power is in the hands of the people, but in terms of its orientation, the people's power must still be exercised by following the provisions contained in 1945 Constitution. The 1945 Constitution also provides guarantees in the form of protection or freedom for each individual except that this protection and freedom do not violate applicable laws and regulations.<sup>10</sup> In other words, what is in the 1945 Constitution is an obligation for the government and society to work hand in hand to realize the values stated in it. Likewise, with the human values which are also contained in the 1945 Constitution, it has become an obligation for all components of the nation to work together to protect and contribute to implementing the protection and law enforcement of human rights.

The 1945 Constitution as the constitution of the Indonesian nation which has the highest position actually regulates protecting and enforcing the law on human rights. This can be seen in the muqoddimah of the 1945 Constitution, paragraph 4 which explains the big goal of the Indonesian nation when it is free from the shackles of colonialism, the big goal what appears in the muqoddimah of the 1945 Constitution is nothing more than showing the wisdom of the Indonesian people in their efforts to provide protection and enforcement of human rights law. In several articles in the 1945 Constitution there are also articles which specifically regulate the protection of every human right. In particular, the concept of protecting and upholding human rights law in Indonesia has been regulated in Articles 28A to 28J, each of which provides and guarantees the rights of every individual to carry out their rights and obligations in state life.<sup>11</sup>

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<sup>8</sup> Achmad Ali, *Pemahaman Dasar Teori – Teori Hukum Dan HAM*, Makassar, (Universitas Hasanuddin: 2009), 31.

<sup>9</sup> Bagir Manan, Soepomo dan HAM, dalam Bagir Manan, *Dimensi-Dimensi Hukum HAM*. Pusat Studi Kebijakan Negara, Fakultas Hukum, Universitas Padjadjaran, Bandung: 2009, 4.

<sup>10</sup> Aminullah, *Pendidikan Hak Asasi Manusia (HAM)*, Universitas Mandala: Jurnal Pendidikan, Vol. 3, No. 3 (Desember 2018), 9.

<sup>11</sup> Sunarso, *Loc.Cit*, 66.



In the concept of legal understanding contained in the Indonesian Constitution (before the amendment), it explicitly does not include the term human rights directly, but the material content contained in the pre-amendment constitution only contains matters relating to the rights of every citizen. Indonesia, in the 1945 Constitution there are at least several important points related to the rights intended for Indonesian citizens which also form the background for the existence of a legal framework which is the initial basis for the protection and enforcement of human rights in Indonesia. The following are five important points in the 1945 Constitution which are directly related to the concept of understanding human rights:

- (1) Equal treatment before the law and equal rights in matters of governance (Article 27 paragraph 2)
- (2) The right to work and a decent life (Article 27 paragraph 2)
- (3) The right to freedom of association and expression of opinions both orally and in writing (Article 28)
- (4) The right to freedom of belief / freedom of religion (Article 28 paragraph 1)
- (5) The right to education is guaranteed by the state (Article 31 paragraph 1).<sup>12</sup>

For example, in article 28A which confirms that "everyone has the right to live and the right to defend his life". This article provides an explanation that the Indonesian nation gives every human being the right to live and they also have the right to defend their life. The role of the Government in this case is to provide protection and law enforcement aimed at ensuring that the rights stated in article 28A can be realized properly. One of the roles of the Indonesian Government is to provide an alternative special court to handle it problems related to the right to life, for example the presence of a judicial body which is specifically for handling criminal cases. This step is aimed at anticipating human rights violations, specifically aimed at preventing cases of deprivation of other people's right to life. This was done by none other than the Indonesian government in order to realize the realization of the rights contained in this article. Of course, this also directly proves that the Indonesian government has also provided a legal umbrella for the implementation of these rights.

Based on explanations above, it can be concluded that the values contained in the 1945 Constitution actually have a relationship with human rights. The correlation between the two can be seen in how the 1945 Constitution provides several freedom rights for Indonesian citizens in the realm of obtaining which rights. These rights are actually included in the concept of human rights in general. Apart from that, the rights mentioned in the articles in the 1945 Constitution are actually also part of human values, it's just that the 1945 Constitution does not directly mention human rights, apart from that being the subject of the Constitution. 1945 are those who are actually Indonesian citizens.

The concept of human rights is the initial thing that must be understood in order to be able to realize it in a more specific instrument. In formulating a conception of human rights, there are at least two components that must be understood, namely the concept of human rights used in the conception or what people understand by human rights, and then what things or objects will be protected through these human rights tools.<sup>13</sup> In a political perspective, human obligations are portrayed as subjects and rights as objects. This means that

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<sup>12</sup> Soerjono and Abdurrahman, *Metode Penelitian Hukum*, (Jakarta: Rineka Cipta, 2003), 106.

<sup>13</sup> T. Pogge, "The International Significance of Human Rights," *The Journal of Ethics* 4, No. 1 (2000), 45.

anyone (in an institutional sense) is considered to be a party who has failed to fulfill a form of human obligation, for example protecting the safety of citizens, maintaining peace and so on, which is nothing other than the object of the human rights problem itself. Prosecution for such negligence is nothing other than the implementation of political policy and based on political power, various standard principles," *Noellum Delictum Poena Sine Pravea Lega Poenali* "in criminal law tends to be violated by accepting the principle of retroactive application (ex post facto laws=retroactive principle) as stated by Robin C Trueworthy in a paper entitled *Retroactive Application of the Anti-Terrorism and Effective Death Penalty Act of 1996 to Pending Case*. It is inevitable that conflicts will arise in efforts to enforce the rights in question which can trigger the emergence of various kinds of arbitrariness.<sup>14</sup>

Got it the universalistic human rights that are often put forward in the legal aspect are not absolute, nor do they understand it particularistic. This means that something could contain universal qualities, for example justice and so on. But it must reach the stage of implementing the substance of what is contained in the term itself. The implementation of something generally does not recognize universality because it will really depend on the situation and conditions around it. At least in legal practice, a nation has different laws from other nations because there are differences in the history of life and culture. Likewise with the concept of justice is also influenced by socio-cultural views that vary between nations.<sup>15</sup> Apart from that, human rights demand that are influenced by technological developments are also increasingly complex. As the issue of privacy as a human right is getting stronger, because with the development of information technology, privacy is becoming increasingly difficult to obtain.<sup>16</sup>

Meanwhile, on the other hand, the current development of information technology also builds the right to obtain information from the national government or international institutions because information openness is a form of transparency and accountability of the government or an international institution.<sup>17</sup> Currently, the focus on implementing human rights in Indonesia seems to be focused on violations committed by the government against society. In fact, in upholding human rights in Indonesia, many human rights issues are influenced by support or even have political content.<sup>18</sup>

The problem of human rights violations will become complicated if the perpetrator is supported by large political powers (Hafner-Burton, 2014). Henceforth, human rights enforcement is needed in various other ways. For example, handling human rights for people with mental disorders is still a problem in Indonesia, so its implementation does not only require a legal basis but requires real action from regional and central governments.<sup>19</sup> The existence of human rights instruments sometimes does not guarantee the enforcement of

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<sup>14</sup> IS Adji, "Notes on Human Rights Courts and Their Problems," *Law Magazine* 19, no. 33 (2001).

<sup>15</sup> M.R. Silva and A. Caetano, "Organizational Justice across Cultures : A Systematic Reviews of Four Decades of Research and Some Directions for the Future," *Social Justice Research* 29, No. 1 (2016), 28.

<sup>16</sup> A. Rengel, "Privacy as an International Human Right and the Right to Obscurity in Cyberspace," *Groningen Journal of International Law* 2, No. 2 (2014), 37.

<sup>17</sup> M. McDonagh, "The Right to Information in International Human Rights Law Maeve McDonagh," *Human Rights Law Review* 13, no. 1 (2013), 24.

<sup>18</sup> I. Hadiprayitno, "Defensive Enforcement : Human Rights in Indonesia," *Human Rights Review* 11 (2010), 389.

<sup>19</sup> I. Irmansyah, YA Prasetyo, and H. Minas, "Human Rights of Persons with Mental Illness in Indonesia: More than Legislation Is Needed," *International Journal of Mental Health Systems* 3, no. 14 (2009), 10.

human rights. Commitment and support from all parties is needed to realize the enforcement of human rights.<sup>20</sup>

Likewise with acts of corruption, which harm and suffer the people. Currently, acts of corruption are also being studied to be strengthened as an act that violates human rights so that when someone is corrupt, they can also be charged under international human rights legal instruments.<sup>21</sup> Another issue in handling human rights cases that needs to be paid attention to in Indonesia is who is responsible for implementing it.<sup>22</sup>

Based on research results, the existence of human rights institutions at the national level has been proven to be able to reduce human rights violations committed by the State.<sup>23</sup> This means that national human rights institutions need to be strengthened to ensure deterrence HAM. Seeing the facts above, the development of human rights law must always be accompanied by an evaluation of the success and/or failure experienced in implementing the law.<sup>24</sup>

### **Dynamics Development of Human Rights in Indonesia of the Reformation Era**

During the reform era in Indonesia, there were several amendments to the 1945 Constitution. These amendments aimed to improve and strengthen the democratic system and protect human rights. In 1999, the first amendment was made to the 1945 Constitution. This amendment changed several articles, including the direct election of the president and vice president by the people, the establishment of the Regional Representative Council (DPD) as a legislative institution, as well as the recognition and protection of human rights. The second amendment was carried out in 2000. This amendment changed articles related to judicial power, including the establishment of the Constitutional Court as an institution responsible for interpreting the 1945 Constitution and reviewing laws against the constitution. Furthermore, in 2001, a third amendment was made which changed the articles related to regional autonomy, regional government, and the relationship between the central and regional governments. The fourth amendment was carried out in 2002. This amendment changed articles related to general elections, including regulations regarding political parties, the election of DPR members and the presidential election. Finally, the fifth amendment was carried out in 2002. This amendment amends articles related to state finances, including regulations regarding the APBN (Budget Income and Shopping Country) And management finance country. By whole, Amendments to the 1945 reform era Constitution aim to strengthen democracy and protect rights basic man, increase autonomy area, And repair system government in Indonesia.

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<sup>20</sup> K. Tsutsui and JW Meyer, "International Human Rights Law and the Politics of Legitimacy Repressive States and Human Rights Treaties," *International Sociology* 23, no. 1 (2008), 121.

<sup>21</sup> A. Peters, "Corruption as a Violation of International Human Rights", *The European Journal of International Law* 29, no. 4 (2019), 1272.

<sup>22</sup> S. Besson, "The Bearers of Human Rights 'Duties and Responsibilities for Human Rights : A Quiet (r) Evolution ?," *Social Philosophy and Policy* 32, No. 1 (2015), 246.

<sup>23</sup> R. M. Welch, "National Human Rights Institutions : Domestic Implementation of International Human Rights Law," *Journal of Human Rights* 16, no. 1 (2017), 916.

<sup>24</sup> Z. Muhammad and J.L. Purohit, "Human Rights in the United Nations ," *Journal of Emerging Technologies and Innovative Research* 6, No. 6 (2019), 418.



This amendment is the result of efforts to build a more state democratic, transparent and fair, after the reform of the 1945 Constitution, it has been amended four times, namely in 1999, 2000, 2001 and 2002. Of course, the amendments to the substance of the Indonesian constitution have had implications for the development of the protection and position of human rights in Indonesia, namely with the publication of several regulations that act as supporting rules that emphasize that the Indonesian government is trying to realize the protection of human rights values. The following are several regulations established by the Indonesian government with the aim of realizing the protection of human rights values:

- (1) UU no. 39 of 1999 concerning Human Rights. This law is the main instrument that guarantees all rights listed in various international instruments concerning human rights. This law contains recognition and protection of very broad rights because many of its provisions refer to the categorization of rights contained in the UDHR, ICCPR, ICESCR, CRC, and several others. Apart from that, UU. No. 39 of 1999 concerning Human Rights also regulates the institutional matters of Komnas HAM
- (2) UU no. 26 of 2000 concerning Human Rights Courts. In this period, the emphasis is on the court process relating to criminal acts which are considered serious violations of human rights. Apart from that, the emergence of this law also shows the procedures for the trial process for human rights violations in court.
- (3) UU no. 23 of 2002 concerning Child Protection. This period of human rights development was marked by the emergence of regulations that regulate and provide protection for children, this was motivated by the many cases that highlighted crimes against children.
- (4) UU no. 20 of 2003 concerning the National Education System. The period of development of human rights in this era is more focused on the state's responsibility for providing educational facilities to the people, because education is part of human rights which is also part of the goal of the Indonesian nation, namely to make the nation's life intelligent.
- (5) UU no. 24 of 2003 concerning the Constitutional Court (MK). This period focuses more on the process of resolving disputes involving state institutions. Not only that, this regulation also explains that the Constitutional Court's authority is not only to resolve disputes between State institutions, but also disputes over election results, party dissolution, etc.
- (6) UU no. 23 of 2004 concerning the Elimination of Domestic Violence. This law was passed due to pressure from women activists who had been shouting about discrimination and the subordination of women's rights to men. The advantage of this law is that the protection of victims of domestic violence is not only imposed on the police but also allows assistance from the community. Victims of violence have the right to receive protection from health workers, social workers, volunteers, companions and/or spiritual guides
- (7) UU no. 13 of 2006 concerning Witness and Victim Protection. The law guarantees the security protection of witnesses and victims. Witnesses and victims in history Often the rights attached to them are threatened, especially their right to life. The ratification of this law confirms that the state has a responsibility to guarantee the rights of witnesses and victims.

- (8) UU no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. This law confirms that racial and ethnic discrimination in social life is an obstacle to kinship, brotherhood, friendship, peace, harmony, security and livelihoods among citizens who basically always live side by side. Racial and ethnic discrimination is a form of human rights violation and must be eliminated.
- (9) UU no. 19 of 2002 concerning Copyright. This law answers the importance of regulating the copyright of every human being's work. This law states that the country has ethnic/ethnic and cultural diversity as well as wealth in the fields of arts and literature with developments that require Copyright protection for intellectual property born from this diversity. This arrangement emphasizes plagiarism and various logging of works.
- (10) UU no. 14 of 2008 concerning Public Information Openness (KIP). The law is the basis for guaranteeing the right to freedom of information and the right to access public information. This law reinforces that it is no longer the time for information in public bodies to be covered up. The public has access to information that is developed for the public interest.
- (11) UU no. 25 of 2009 concerning Public Services. This instrument confirms that the state has a responsibility to serve every citizen in order to fulfill their basic needs without discrimination. This Law also confirms the existence and existence of the Ombudsman (UU No. 39 of 2008 concerning the Indonesian Ombudsman) which was established as a state institution tasked with supervising the implementation of public services.
- (12) UU no. 21 of 2000 concerning Workers or Labor Unions. This law regulates freedom of expression, association, assembly of unions or workers. In this regard, regulations are also regulated regarding employment (Law No. 13 of 2003), regarding the placement of workers abroad (Law No. 39 of 2004), and the resolution of industrial relations disputes (Law No. 2 of 2004). In general, the above labor law has received substantial criticism from labor unions.
- (13) UU no. 8 of 1999 concerning Consumer Protection. This law emphasizes that the opening of the national market as a result of the process of economic globalization must continue to guarantee an increase in people's welfare as well as certainty regarding the quality, quantity and safety of the goods and/or services they obtain in the market. The law clearly guarantees the rights and obligations of consumers, including procedures for resolving consumer disputes which can be done through litigation and/or non- litigation channels in accordance with the agreement between the parties to the dispute.<sup>25</sup>

### **Instrument Protection and Enforcement of Human Right in Indonesia**

The four stages of amendments to the 1945 Constitution have laid the foundation for national life which applies democratic values and principles in the Unitary State of the Republic of Indonesia based on the State ideology, namely Pancasila. These reforms basically require a system of political checks and balances, supremacy of law, respect for human rights, affirming freedom of opinion, and freedom of assembly and association.<sup>26</sup> After the

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<sup>25</sup> Dora Kusumastuti, *State, Negara, HAM Dan Demokrasi*, (Surakarta: UNISRI Press, 2020), 53.

<sup>26</sup> Maruarar Siahaan, *Kebebasan Berserikat dan Berkumpul secara Damai Serta Implikasinya dalam Civis* Vol. 3 No. 1 Jul 2011.

amendments to the 1945 Constitution were made in 1999-2002, there was an escalation in increasing legislation regarding the protection of human rights. The post-amendment Constitution of Indonesia (UUD 1945) can be said to be the constitution of human rights in Indonesia.<sup>27</sup>

So, in general it can be said that Indonesia is on an equal footing with other nations in facing human rights issues which are increasingly developing and are becoming a major concern in the world. Viewed from the perspective of moral principles, Human Rights establish certain standards of human behavior, human values, and are regularly protected as legal rights in national and international law.<sup>28</sup>

If we look at history, human rights have actually existed since Pancasila was ratified and it became a decision to make Pancasila the guideline and reference for the State of Indonesia, even though in fact it was only an implied part. Both in terms of the relationship between humans and God and also in the relationship between humans and other humans, this is all contained in the values of Pancasila in each principle in Pancasila. Rules regarding human rights are also regulated in the law No. 39 of 1999, this regulation is based on the UN human rights declaration guidelines in the UN convention regarding discussions on issues of discrimination against women and also on issues that must be received by a child, as well as several international references containing related rules regarding human rights.<sup>29</sup>

The material content of the Law mentioned above must adapt to various existing laws in society and must also adapt to national development which in fact is based on Pancasila and also the 1945 Constitution. The explanation above indicates that human rights are very important for human survival and also to safeguard their rights, and this will always be a concern for the government to carry out and implement the values contained in Pancasila which were later outlined in the 1945 Constitution.

In Indonesia there is a judicial body regarding matters relating to human rights violations, but the regulations governing human rights violations are still broad, especially in the realm of criminal law (Criminal Code). However, in its implementation the legal guidelines that regulate it do not yet have the option of requiring all issues involving human rights violations to be executed through a special judicial body that handles cases of human rights violations, but there are several categories that differentiate between crimes that include human rights violations and crimes that do not fall into the category of human rights violations.

The application of law to human rights violations is actually not a new issue that has been discussed in various scientific studies with the theme of upholding human values. Looking at the dark history of the past, Indonesia has experienced ups and downs in cases that have offended or even gone against human values, therefore the government's step in providing a legal umbrella that protects and guarantees the implementation of human rights

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<sup>27</sup> L. Tibaka and Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of The Republic of Indonesia," *Fiat Justisia* 11, No. 3 (2017), 279.

<sup>28</sup> SK Rastogi, "Human Rights and Its Impact on Educational and Social Awareness," *International Journal of Innovative Social Science & Humanities Research* 1, No. 8 (2014), 63.

<sup>29</sup> Karlina Leksono and Supeli, "No Short Path to Reconciliation", *Journal of Democracy and Human Rights*. Jakarta: ID H-THC, 2001) Vol No. 3, 9.

is a very wise step because it has the government's steps to provide legal protection for the implementation of human rights can minimize the occurrence of violations of human rights.<sup>30</sup>

The application of law for human rights violations is regulated in the Law No. 26 of 2000 concerning Human Rights Courts, with the existence of regulations which are specifically focused on regulating the concept of the application of law for violations of human rights, a common thread can be drawn that with respect to the Indonesian people, especially in this case, the government, which acts as a policy maker, states that Indonesia has been serious in its efforts to uphold the law in cases of human rights violations, the presence of a judicial body which is specifically devoted to handling cases of human rights violations has answered that the Indonesian nation has contributed to implementing the human values previously mandated by the Universal Declaration of Human Rights. (UDHR). Apart from that, the presence of the human rights court in Indonesia has proven and demonstrated the existence of human values which were previously stated in the 1945 Constitution.<sup>31</sup>

The Human Rights Court is a special judicial institution in Indonesia which has absolute competence regarding resolving issues of human rights violations, unlike judicial bodies in general, the Human Rights Court only focuses on one object which is the authority of the Court to resolve it, the object which is the domain of discussion. and the legal field studied in the Human Rights Court is cases of serious human rights violations. A serious human rights violation is a crime that causes the destruction of all or part of an ethnic, racial or religious group (genocide). In essence, this crime causes the side effect of destroying the order of life caused by an act of crime that aims to destroy or exterminate. Furthermore, Serious crimes against human values cannot be tolerated, because these crimes are fatal acts that impact human rights values that have been betrayed. These crimes are the responsibility of the Human Rights Court to resolve these cases.

Whether an implementation of protection and enforcement of human rights goes well or badly does not only depend on the judiciary in carrying out its authority, but other legal instruments also determine the direction of the process of implementing human rights. Something that should be considered by the government is how the mechanism for legal reform will follow the dynamic developments and changes in society. In other words, the law must follow changes in social civilization so that things do not happen outside the auspices of the constitution which will also make it difficult for the government to handle them.<sup>32</sup>

## **Conclusion**

In the context of discussing human rights, the state through its power holder (government) has full responsibility for the implementation of just enforcement of human rights law, therefore the Indonesian government is aware of this, so the government's tactical step to realize just enforcement of human rights law is by legitimizing the related regulations. with human rights as well as forming a special commission that operates in the humanitarian

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<sup>30</sup> Zainal Abidin, "Pengadilan HAM: Regulasi, Penerapan dan Perkembangannya", Jurnal Pusat Dokumentasi ELSAM, 31.

<sup>31</sup> Seodjono Dirjdjosisworo, Pengadilan HAM, (Bandung: Citra Aditya Bakti, 2002), Cet. I, 145.

<sup>32</sup> Dirjdjosisworo, Human Rights Court, 146.

sector, even the Indonesian government through law. No. 26 of 2000 concerning Human Rights Courts has committed to resolving cases of human rights violations through special ad hoc courts, namely human rights courts. As we know Since Indonesia is a country of law, it is an obligation for the Indonesian Government to provide legal protection and enforcement of human rights which are also part of the rights of the Indonesian people. With regard to human rights which are part of the Indonesian people, they are actually regulated in articles 28 A to 28 J of the 1945 Constitution. Even though the substance is stated in articles 28 A to 28 J of the 1945 Constitution, it is in the context of implementing and enforcing the law against Human rights values in Indonesia experience ups and downs caused by several obstacles.

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