

PalArch's Journal of Archaeology of Egypt / Egyptology

PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS IN THE UNITED STATE OF THE REPUBLIC OF INDONESIA

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Muhammad Ramli Haba, Ilham Abbas, Zulkarnain Umar. Protection And Enforcement of Human Rights in the United State of The Republic of Indonesia -- PalArch's Journal of Archaeology of Egypt/Egyptology 19(3), 317-323. ISSN 1567-214x

Keywords: Protection, Human Rights, Unitary State of The Republic of Indonesia

ABSTRACT

Human Rights (Indonesia: *Hak Asasi Manusia/HAM*) are basic rights and basic rights by every citizen to enjoy the life of the nation and state, united sovereign which is protected by the 1945 Constitution of the Republic of Indonesia because of the development and struggle in realizing and upholding human rights. In Indonesia, especially after the resistance to foreign colonialism, cannot be seen as a conflict that only represents the interests of a particular group, but concerns the interests of the Indonesian nation as a whole. Today, although many cases of human rights violations are suspected to be in Indonesia, in general, the implementation of human rights needs to be enforced and protected, which is starting to show signs of progress. This can be seen by the existence of legal regulations on Human Rights (HAM) through statutory regulations. In addition, the Human Rights Court has been established in an effort to resolve various cases of human rights violations that occur.

INTRODUCTION

Being a citizen of the Republic of Indonesia according to the 1945 Constitution has a very important meaning in the legal system and government. The 1945 Constitution recognizes and respects every individual human being within the territory of the Unitary State of the Republic of Indonesia (Estradivari et al., 2022). Therefore, human rights are basic rights that are inherent in humans by nature, universal, and eternal as a gift given by God Almighty (Balarabe, 2021; Emanuilov & Yordanova, 2022; Košir & Lakshminarayanan, 2021; Ottenheimer et al., 2022; Usha Nandhini et al., 2021). Besides that, there are

also provisions regarding certain human rights guarantees which only apply to citizens or at least for citizens who are given certain specialties or virtues, such as the right to work, the right to education and rights such as the right to life, the right to have a family, the right to justice, the right to freedom, the right to security, are rights that cannot be ignored or taken away by anyone, as stated in the formulation of human rights as stated in the Preamble to the Charter of Human Rights vide MPR Decree No. XVII/MPR/1998.

Human rights (HAM) are essentially natural rights that are inherent in every human being since birth, which reciprocally creates an obligation for the State to fulfill these rights specifically for Indonesian citizens who have rights (Nugroho, 2017; Setiawan, 2016). This understanding implies that Human Rights (HAM) are gifts from the Almighty to Human Rights (HAM) are rights inherent in human beings, and without these rights humans cannot live properly as humans. Human rights are universal (universal), because it is believed that some rights are owned without distinction of nation, race, religion, or gender, that humans must have the opportunity to develop according to their talents and ideals. Human rights are suprallegal in nature, meaning that they do not depend on the existence of a state or constitution, nor on government power, and even have higher authority, because human rights are owned by humans not because of generosity or government grants, but because they come from more expensive sources. Called Human Rights (HAM) because they are inherent in human existence, which are universal, equitable and cannot be transferred. Because human rights are natural, in fact they do not need juridical legitimacy for their implementation in a national or international legal system.

This theoretical idea of Human Rights (HAM) is recognized as the most essential value in human beings. However, because most of the systems of human life are secular and positive, the existence of Human Rights (HAM) requires a juridical basis to be enforced in regulating human life. The struggle and development of human rights in every country has its own historical background in accordance with the life of the nation, even though the nature and nature of human rights everywhere are basically the same. or any body that can revoke that right from the hands of the owner. Therefore, all countries in the world and especially the government need to protect Human Rights (HAM) specifically in Indonesia

METHOD

Types of Research This research is a descriptive study with a qualitative approach. Bogdan and Taylor in Moloeng (2007:4) define qualitative research as a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior from phenomena that occur. Furthermore, Creswell & Creswell (2017) suggests that descriptive research emphasizes data in the form of words, pictures, and not numbers caused by the application of qualitative methods. In addition, all that is collected is likely to be the key to what has been researched. Sampling or data sources in this study was carried out purposively and the sample size was determined by snowball, the collection technique was triangulation (combined), the data analysis was qualitative and the research results emphasized the meaning of generalization.

RESULT AND DISCUSSION

Legal Basis for the implementation, enforcement and respect of Human Rights (HAM) in Indonesia The term or word of human rights itself is not actually found in the 1945 Constitution, either in the preamble, body, or explanation. The terms that can be found are the explicit inclusion of the words of the rights and obligations of citizens, and the rights of the House of Representatives (Circle et al., 2012; Haris, 2020, 2020). It was only after the 1945 Constitution underwent a second amendment or amendment that the term human rights (HAM) was explicitly stated. In order to strengthen attention to the development of Human Rights (HAM) in Indonesia, by various groups of people (organizations and institutions). It has been proposed that an MPR Decree containing a charter of human rights be issued or an MPR Decree on the GBHN which contains the operationalization of the rights and obligations of Indonesian human rights contained in the 1945 Constitution (Košir & Lakshminarayanan, 2021; Ottenheimer et al., 2022).

The decision of the MPR RI which is expected to contain the existence of Human Rights (HAM) can be realized during the Reformation Order, namely during the Special Session of the MPR which took place from November 10 to 13, 1988. In the 4th plenary meeting on November 13, 1988, it was decided the birth of the MPR RI Decree No. XVII/MPR/1988 on Human Rights (HAM). Then the MPR Decree became one of the basic references for the birth of Law no. 39 of 1999 concerning Human Rights which was ratified on 23 September 1999. This law was then followed by the issuance of Perpu No. 1 of 1999 which was later refined and stipulated into Law No. 26 of 2000 concerning the Human Rights Court. As part of Human Rights (HAM), previously Law No. 9 of 1998 concerning Freedom of Expression of Opinion in Public was enacted and promulgated in Jakarta on October 26, 1998, and contained in the LNRI of 1999 No. 165.

In addition, Indonesia has also ratified several international conventions that regulate Human Rights, including: Declaration on Protection and Torture, through Law no. 5 of 1998. Convention on Women's Political Rights 1979, through Law No. 68 of 1958. Convention on the Elimination of All Forms of Discrimination Against Women, through Law no. 7 of 1984. Convention on the Protection of Children's Rights, through Presidential Decree No. 36 of 1990. Convention on Manpower, through Law no. 25 of 1997, whose implementation was temporarily suspended. 1999 Convention on the Elimination of Forms of Racial Discrimination, through Law no. 29 of 1999.

The enforcement of human rights always has a positive correlation with the upholding of the rule of law. So that with the establishment of the National Human Rights Commission on Human Rights and the Human Rights Court of Human Rights, the legal regulation of Human Rights on Human Rights with the enactment of Law no. 39 of 1999 and Law no. 26 of 2000 and the election of ad hoc judges, will further refresh a healthy law enforcement climate. This means that the truth of law and justice must be enjoyed by every citizen in an egalitarian way. Whether we realize it or not, with the government's political will to enforce human rights, it will have implications for a healthier political culture and a brighter democratization process.

It must also be realized that the need for upholding human rights, human rights and justice does require a process and demands for political consistency. Likewise, the existence of a legal culture of government officials and community leaders is a determining factor that supports the upholding of Human Rights. sourced from the 1945 Constitution as well as in practical reality in the field it is suspected to be full of violations. The causes of human rights violations include the existence of arrogance in the authority and power of an official in power, which makes it difficult to control himself, resulting in violations of the rights of others. Especially in the last ten years, the issue of Human Rights and Human Rights in Indonesia has moved quickly and in very conspicuous numbers.

This fast movement is mainly because there have been so many human rights violations, ranging from simple human rights violations to gross human rights violations. Besides that, it is also because of the persistence of community organizations in fighting for the advancement and protection of human rights. Human rights issues were "popular" in Indonesia during the New Order government. At this time, many events are considered as human rights violations.

Basically, Human Rights (HAM) are contained in the 1945 Constitution CHAPTER X-A Article 28-A to Article 28-J. Some people interpret that with this legal basis, the Indonesian people have the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law (UUD 1945 2nd Amendment Article 28-D paragraph 1). Indeed, if judging from the definition of Human Rights (HAM), Indonesia has recorded a lot of cases, especially in the field of Human Rights (HAM). For example, cases of eviction of houses built around bridges, cleaning of street vendors who often disturb road users such as motorized vehicle users and pedestrians.

In the period leading up to the transition of government from the New Order era to the Reformation era, many incidents related to these human rights violations. The 1998 incident that led to the resignation of President Suharto at that time was actually the culmination of all the previous events. Problems faced by the government in enforcing Human Rights (HAM) in Indonesia The fact shows that the issue of Human Rights (HAM) in Indonesia has always been in the spotlight and a subject of constant discussion, both because of its basic concept originating from the 1945 Constitution and in its practical reality. in the field is suspected to be full of violations. The causes of human rights violations include the arrogance of the authority and power of an incumbent official, which makes it difficult to control himself, resulting in violations of the rights of others.

Especially in the last ten years, the issue of Human Rights (HAM) in Indonesia has moved quickly and in very conspicuous numbers. This fast movement is mainly because there have been so many human rights violations, ranging from simple ones to gross human rights violations.

In addition, because of the persistence of community organizations in fighting for the promotion and protection of Human Rights (HAM). Various problems faced by the Indonesian government in the context of respecting, recognizing,

enforcing law and Human Rights (HAM) include: (1) Law Enforcement in Indonesia has not been felt optimally by the community. This is shown, among other things, by the low performance of the judiciary. Law enforcement in a number of cases of gross violations of Human Rights (HAM) whose investigations were completed in 2002, 2003, and 2004, have not yet been followed up at the investigation stage; (2) There are still laws and regulations that are not gender-oriented and have not provide protection of human rights (HAM). This happened, among other things, because of the existence of legal apparatus, both implementing apparatus of laws and regulations, as well as apparatus of drafting laws and regulations who do not yet have sufficient understanding of the principles of protecting human rights; (3) The condition of the nation's economic life has not improved as a result of the economic crisis that has caused most of the people to be unable to enjoy their basic rights, both economic rights, such as the unfulfilled right to decent work and the right to education; (4). Throughout 2004 there have been several conflicts within the community, such as Aceh, Ambon, and Papua which not only involved state officials but also armed groups which resulted in the non-fulfillment of the right to live in safety and the right to participate in government; (5) The existence of acts of terrorism aimed at public facilities that cause a feeling of insecurity for the community; (6) With globalization, the intensity of public relations between one country and another is getting higher. Thus, the tendency of the emergence of transnational crimes is becoming more and more common. These crimes, among others, related to narcotics, money laundering and terrorism.

One of the problems that often arise is the circulation of fake documents. What makes outsiders free to come to Indonesia Several human rights issues in Indonesia are: (1) Women's Protection: Justice and gender equality. Article 27 of the 1945 Constitution guarantees the equal rights of women and men; and That women are part of the Human Rights (HAM) listed in Law no. 7/198-4 on anti-discrimination and Law no. 39/1999 on RIGHTS. There are also women's political rights listed in Law no. 68/1958; (2). National Action Plan (RAN) for the Elimination of Trafficking in Women and Children Indonesia has a national action plan for the elimination of trafficking in women and children from 2003 to 2007. The RAN is an implementation of the UN convention against Organized Crime between States; (3). Protection of Children's Rights The Indonesian government has taken legislative and administrative steps to further improve the protection of the rights of children and women. These legislative steps include the issuance of Law no. 32 of 2002 concerning child protection and Law no. 20 of 2003 with the national education system. Meanwhile, administrative steps in determining action plans and determining directions for the promotion and protection of Human Rights (HAM), among others, are through Presidential Decree No. 59 of 2002 concerning the National Action Plan for the Elimination of the Worst Forms of Child Labour. And also the formation of the Indonesian Child Protection Commission was formed in 2003 through Presidential Decree No. 77 of 2003 Government efforts in respecting, recognizing and enforcing Law and Human Rights (HAM) To realize and enforce Human Rights (HAM) in Indonesia is not as easy as writing and saying it. This is because many obstacles and challenges are no longer limited to terrorism, but have become a reality that cannot be avoided, let alone postponed.

In the enforcement of Human Rights (HAM) through the criminal law system that has been in force in Indonesia, there are obstacles or obstacles that are principal, substantial and classical. The government is obliged and responsible for respecting, protecting, upholding and advancing human rights through effective implementation steps in the legal, political, social, cultural, defense and state security fields, and other fields. That in order to participate in maintaining world peace and guaranteeing the implementation of human rights as well as providing protection, certainty of justice and a feeling of security to individuals or the community, it is necessary to establish a Human Rights Court to resolve gross violations of human rights in accordance with the provisions of Article 104 paragraph (1) of Law no. 39 of 1999 concerning Human Rights, namely Law no. 26 of 2000. The government's program for law enforcement and human rights (PP No. 7 of 2005) covers the eradication of corruption, anti-terrorism, and eradication of narcotics and dangerous drug abuse. Therefore, law enforcement and human rights must always be strictly enforced, non-discriminatory and consistent. Community participation can also participate in the protection, enforcement and promotion of human rights. The community here includes, among others: any person, group, political organization, community organization, non-governmental organization or other social institution such as universities, study institutions. This community participation can be in the form of: a) Submission of proposals regarding the formulation and virtues related to human rights; b). Conduct research; c). Conduct education; d). Disseminate information on human rights

CONCLUSION

Human Rights (HAM) can be enjoyed by every citizen towards the brighter democratization of the enforcement of Human Rights (HAM). The issue of Human Rights (HAM) in Indonesia is in the spotlight and the subject of constant discussion, in practical reality on the ground it is suspected to be full of violations; Violations of Human Rights (HAM) include the arrogance of the authority and power of an incumbent official, which makes it difficult to control himself so that the rights of others are violated.

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