



Protection Of Human Rights In The Indonesian Constitution: An Analysis Of The 1945 Constitution

Abdul Rahman, Sugianto, Dudung Hidayat

¹University of Dirgantara Marsekal Suryadarma Jakarta, Indonesia. Email abdulenhrahman@gmail.com

² UIN Syekh Nurjati, Cirebon, Indonesia. Email sugiantoaphi@gmail.com

³UIN Syekh Nurjati, Cirebon. Email

Corresponding Author Email abdulenhrahman@gmail.com

Abstract. This paper analyzes the protection of human rights (HAM) in the 1945 Constitution of the Republic of Indonesia (1945 Constitution). The research uses normative juridical methods with conceptual and legislative approaches to examine how the 1945 Constitution protects human rights. The study results show that the 1945 Constitution has comprehensively accommodated the protection of human rights, especially after a series of amendments. This amendment has strengthened the guarantee of human rights protection and clarified the basic rights guaranteed by the Constitution. However, even though human rights protection has been accommodated in the 1945 Constitution, implementing these protections still faces various challenges in practice. Some of the main challenges identified include inconsistencies in law enforcement, lack of harmonization of laws and regulations, and low public awareness and understanding of their rights. This paper concludes that further efforts are needed to strengthen human rights enforcement in Indonesia. These efforts include harmonization of relevant laws and regulations, capacity building of law enforcement institutions, and campaigns to raise public awareness of the importance of human rights. Thus, to achieve adequate human rights protection in Indonesia, collaboration between the government, legal institutions, and the wider community is needed to create an environment conducive to respecting and enforcing human rights.

Keywords: Human Rights, 1945 Constitution, Constitution of Indonesia, Legal Protection

INTRODUCTION

Human rights are fundamental rights inherent in every individual from birth, regardless of race, religion, ethnicity, or social status. Protecting human rights is an important element in the modern state of law, including in Indonesia, because it ensures that every individual has rights and freedoms guaranteed by law. The 1945 Constitution, as the country's supreme constitution, plays a crucial role in ensuring the protection of human rights for all Indonesian citizens.

Since the 1998 reform, Indonesia has made four amendments to the 1945 Constitution. This amendment improved and strengthened the country's legal and

political framework, including human rights protection. One of the significant changes resulting from the amendment is strengthening human rights protection in the constitution, which includes the affirmation of fundamental rights and freedoms that must be respected and protected by the state.

However, while these constitutional changes have strengthened the legal framework for human rights protection, questions remain about the extent to which the 1945 Constitution has accommodated comprehensive human rights protection. In addition, another challenge that arises is how to implement this protection in daily practice. Various cases of human rights violations and injustices still occur, which shows that although the legal framework has been strengthened, implementation on the ground still faces many obstacles.

In this context, it is essential to continuously evaluate and improve existing human rights protection mechanisms, ensure existing laws and policies align with human rights principles, and increase public awareness and understanding of their rights. Thus, efforts can be made to make Indonesia a country that truly respects and protects human rights.

Problem Formulation

1. How did the human rights arrangements in the 1945 Constitution develop before and after the amendment?
2. So far, the CONSTITUTION of 1945 already comprehensively Accommodates the protection of HAM.
3. What are the challenges in implementing human rights protection based on the 1945 Constitution in Indonesia?

METHOD

The method used in this study is a Systematic literature review, commonly abbreviated as SLR. A systematic literature review is a systematic way that aims to collect and then critically analyze by presenting data and findings from various other types of research as material for analyzing the 1945 Constitution in the field of human rights enforcement. The systematic literature review method is usually carried out sequentially or systematically. In other words, literature reviews start from the most basic things and then work on complex things. The resulting literature review will be more detailed, accurate, and complex. Therefore, when conducting a literature review using this method, the author can obtain a sharper and higher-quality theoretical foundation.

DISCUSSION

1.1. The development of human rights arrangements in the 1945 Constitution before and after the amendment

The development of human rights arrangements in the 1945 Constitution of the Republic of Indonesia (1945 Constitution) has undergone significant changes after the constitutional amendment. Before the amendment, human rights regulation in the 1945 Constitution was minimal and not comprehensive. Human rights protection is not explicitly regulated in several very general articles, such as the right to life, freedom of religion, and freedom of association. This lack of clarity in the regulation leads to weaknesses in enforcing human rights in Indonesia, where the state does not have a clear and detailed obligation to protect and promote human rights.

However, after the amendments that took place in four stages between 1999 and 2002, the human rights arrangements in the 1945 Constitution underwent significant changes. This amendment strengthens and clarifies the protection of human rights in the constitution by adding Chapter XA on Human Rights, which includes Articles 28A to 28J. This chapter regulates in detail the various basic rights and freedoms that each individual has, including the right to life, the right to freedom of religion, the right not to be tortured, the right to freedom of association and assembly, the right to freedom of opinion, the right to work, the right to education, the right to health, and the right to decent housing.

The amendment also affirms the state's obligation to respect, protect, and fulfill human rights, ensuring that these rights are protected in all aspects of life. In addition, Article 28J regulates the restriction of human rights, which can only be done through law for the purpose of respecting the rights of others and fulfilling the demands of justice under religious values, morality, and public order. The impact of this amendment is very positive, raising awareness about the importance of human rights among the community and the government and encouraging the establishment of institutions such as the National Human Rights Commission (Komnas HAM) that play a role in monitoring, investigating, and advocating for human rights. In addition, various laws and regulations supporting human rights protection were also born as a result of this amendment. However, challenges in implementation remain, and continuous efforts are needed to ensure that human rights are truly protected and fulfilled in daily life.

The development of human rights arrangements in the 1945 Constitution of the

Republic of Indonesia (1945 Constitution) has undergone significant changes after the constitutional amendment. The following is an explanation of the developments before and after the amendment:

1.2. Before the Amendment

1. **Limited Provisions:** Before the amendment, the 1945 Constitution only provided minimal provisions related to human rights. Human rights protection is not explicitly and comprehensively regulated in the Constitution.
2. **Articles Related to Human Rights:** The 1945 Constitution contains articles related to human rights, such as the right to life, freedom of religion, and freedom of association. However, the settings are very general and not detailed.
3. **Ambiguity:** The ambiguity in these arrangements has led to weaknesses in human rights enforcement in Indonesia. The state does not have a clear and detailed obligation to protect and promote human rights.

1.3. After the Amendment

1. **Strengthening Human Rights Protection:** The 1945 Constitution Amendment, which took place in four phases between 1999 and 2002, brought about major changes in human rights arrangements. This amendment strengthens and clarifies the protection of human rights in the constitution.
2. **Addition of Special Chapters:** The amendment adds Chapter XA on Human Rights, which includes Articles 28A to 28J. This chapter details the various basic rights and freedoms that each individual has.
3. **Regulated Rights:** The rights regulated in Chapter XA include the right to life, the right to freedom of religion, the right not to be tortured, the right to freedom of association and assembly, the right to freedom of opinion, the right to work, the right to education, the right to health, and the right to decent housing.
4. **State Obligations:** The amendments also affirm the state's obligation to respect, protect, and fulfill human rights. The state must ensure that these rights are protected in all aspects of life.
5. **Restrictions and Responsibilities:** Article 28J regulates the restriction of human rights, which may only be carried out through law to respect the rights of others and fulfill the demands of justice in accordance with religious values, morality, and public order.

1.4. Impact of the Amendment

1. **Increased Awareness:** Constitutional amendments raise public and government awareness of the importance of human rights.
2. **Establishment of Institutions:** The emergence of institutions focused on human rights protection, such as the National Commission on Human Rights (KomnasHAM), which monitors, investigates, and advocates for human rights.
3. **Laws and Regulations:** This amendment also encourages the birth of various laws and regulations supporting human rights protection.

Overall, the amendment to the 1945 Constitution has provided a more robust and transparent legal basis for protecting human rights in Indonesia. However, challenges in its implementation still exist, and continuous efforts are needed to ensure that human rights are protected and fulfilled in daily life.

The extent to which the 1945 Constitution has accommodated the comprehensive protection of human rights

The 1945 Constitution accommodated the comprehensive protection of human rights, especially after a series of amendments between 1999 and 2002. This amendment introduces Chapter XA, which explicitly regulates human rights, covering Articles 28A to 28J. Here are some ways of the 1945 Constitution accommodating human rights protection:

1. **Affirmation of Fundamental Rights**
Chapter XA of the 1945 Constitution regulates in detail the various basic rights owned by each individual. These include the right to life (Article 28A), the right to form a family and continue offspring (Article 28B), the right to survival and development of the child (Article 28B), the right to good health and the environment (Article 28H), and the right to education (Article 28C). Each article explicitly guarantees these rights, reinforcing the state's commitment to protecting human rights.
2. **State Obligations**
Article 28I of the 1945 Constitution emphasizes that human rights cannot be reduced. The state must also protect, promote, enforce, and fulfill human rights. This means that the state must actively ensure these rights are respected and implemented, not only passively but also through positive actions.
3. **Legal Restrictions**
Article 28J provides that human rights can only be restricted by law, and only the rights of others can be restricted, and the demands of justice must be met following

moral considerations, religious values, security, and public order. These restrictions provide a clear framework for how these rights can be restricted, ensuring that restrictions are not arbitrary and always have a solid legal basis.

4. **Strengthening Through Human Rights Institutions**
Constitutional amendments have also encouraged establishing and strengthening institutions focused on human rights protection, such as the National Commission on Human Rights (Komnas HAM). This institution functions to supervise, research, and provide recommendations on human rights issues, as well as act as a guardian against human rights violations.
5. **Access to Justice**
Article 28D of the 1945 Constitution affirms that everyone has the right to fair legal recognition, guarantee, protection, certainty, and equal treatment before the law. This provides a solid legal basis for individuals to assert their rights and access justice when those rights are violated.
6. **The Right to Non-Torture and Inhumane Treatment**
Article 28G states that everyone has the right to protect themselves, their family, honor, dignity, and property, as well as the right to a sense of security and protection from the threat of fear to do or not to do something that is a human right. This includes protection against torture and inhuman or degrading treatment.
7. **Participation in Government**
Article 28E of the 1945 Constitution guarantees freedom of religion, opinion, and association. This includes the right to participate in government, directly or through elected representatives. It is a key element of democracy and ensures citizens have a say in decision-making that affects their lives.

Although the 1945 Constitution has accommodated the comprehensive protection of human rights in the constitutional text, implementing such protection in practice still faces challenges. There are still cases of human rights violations, and not all rights listed in the Constitution are fully realized daily. Challenges such as inconsistency in law enforcement, lack of harmonization of laws and regulations, and low public awareness and understanding of their rights must be overcome.

The 1945 Constitution has provided a robust and comprehensive foundation for protecting human rights. Still, continuous efforts are needed to ensure these rights are truly protected and fulfilled in real life.

Challenges in the implementation of human rights protection based on the 1945 Constitution in Indonesia

Implementing Human Rights Protection in Indonesia based on the 1945 Constitution (Constitution) faces various challenges and is Multidimensional. However, the 1945 Constitution guaranteed the protection of human rights through various means.

Various interrelated factors often hampered realization in the field. One of the main challenges is inconsistency in law enforcement. In Indonesia, many cases of human rights violations are still not followed up fairly and transparently, even some violations involving law enforcement officials themselves. This reflects the weak judicial system and lack of accountability at various levels of government.

In addition, there is still a gap between policy and implementation caused by slow bureaucracy and rampant corruption. Corruption not only weakens the effectiveness of law enforcement but also creates injustice and discrimination in handling human rights cases. Limited human resources and lack of training for law enforcement officials are also significant obstacles. Officials who do not deeply understand human rights principles often commit actions that violate individual rights.

Other challenges include low public awareness of their rights and stigma against victims of human rights violations. Many people do not fully understand the rights guaranteed by the 1945 Constitution, so they do not know how to fight for them when these rights are violated. The stigma against victims of human rights violations also causes them to be reluctant to report or seek justice for fear of unfair treatment or even retaliation.

In addition, the existence of political and economic conflicts of interest often worsens the situation. The interests of certain groups, be it political or business elites, usually override the human rights of individuals. This is reflected in various cases where government decisions are more concerned with economic gain or political stability than protecting people's rights. For example, in the case of land eviction or customary land grabbing, community rights are often ignored for the sake of development projects.

To overcome this challenge, all parties, from the government and law enforcement officials to civil society, are strongly committed to jointly fighting for more effective and equitable human rights protection in Indonesia. Bureaucratic reform, increased accountability, transparency, and comprehensive human rights education for the apparatus and the community are essential steps that must be taken. Only with close cooperation

and high commitment can true human rights protection under the mandate of the 1945 Constitution be realized in Indonesia.

CONCLUSION

The 1945 Constitution has undergone significant updates since its amendment, accommodating the protection of Human Rights (HAM) more comprehensively than the previous version. This amendment reflects progress in recognizing and guaranteeing human rights, including the right to freedom, equality, and protection from all forms of discrimination. Nevertheless, the implementation of human rights protection in Indonesia still faces various challenges.

One of the main challenges is the need to harmonize laws and regulations, which are often out of sync with human rights norms regulated in the 1945 Constitution. This causes legal uncertainty and gaps in human rights enforcement. In addition, increasing law enforcement capacity is very important because many law enforcement officials have not fully understood and applied human rights principles properly. This capacity building includes in-depth training and a rigorous evaluation system to ensure fair and transparent law enforcement.

No less significant is the increase in public awareness of their own rights. High public awareness of human rights can help encourage active participation in reporting violations and fighting for justice. With these steps, it is hoped that the protection of human rights guaranteed in the 1945 Constitution can be realized more effectively in the lives of the nation and state, creating a more just society.

BIBLIOGRAPHY

- Asshiddiqie, J. (2006). *Constitution and Indonesia's Constitutionalism*. Jakarta: Secretariat General and Clerk of the Constitutional Court of the Republic of Indonesia.
- Budiardjo, M. (2008). *Fundamentals of Political Science*. Jakarta: Gramedia Pustaka Utama.
- Dynamics of Human Rights Law Drafting (HAKHAM)*. Bogor: Ghalia Indonesia.
- Effendi, M. (2005). *The Development of the Human Rights Dimension & Process*
- Hidayat, A. (2017). *Legal Discovery through Judge's Interpretation in Court Decisions*. Bandung: Pandecta.
- Kasim, I. (2001). *Civil and Political Rights: Selected Essays*. Jakarta: Elsam.Gold.
- Latif, Y. (2011). *The Plenary State: History, Rationality, and Actuality*
- Mahfud MD, M. (2010). *Constitution and Law in Controversial Issues*. Jakarta: Rajawali Press.
- Marzuki, P. M. (2017). *Legal Research: Revised Edition*. Jakarta: Kencana.

- Muhtaj, M. E. (2015). *Human Rights in the Constitution of Indonesia*. Jakarta: Modern. Jakarta: Gramedia Pustaka Utama.
- Nasution, A. B. (2011). *Aspirations of Constitutional Government in Indonesia: A Socio-Legal Study of the Constituent Assembly 1956-1959*. Jakarta: Pustaka Utama Grafiti. *Pancasila*. Jakarta: Gramedia Pustaka Utama.
- Saraswati, R. (2012). *Human Rights Law: Theory and Application*. Semarang: Diponegoro University Press.
- Soemantri, S. (2006). *Procedures and Systems for Constitutional Amendments*. Bandung: Alumni.
- Suseno, F. M. (2001). *Political Ethics: Basic Moral Principles of the State*
- Wignjosoebroto, S. (2002). *Law: Paradigms, Methods and Dynamics of the Problem*.
- Yuliartha, I G. (2009). *Pretrial Institutions in the Present and Future Perspectives in Relation to Human Rights*. Thesis. Semarang: Master of Law Program, Diponegoro University.