

Implementation and Consequences of the Rule of Law and Human Rights

Ignasius Atma

Hukum, Universitas Atma Jaya Makassar

Corresponding Author: Ignasius Atma ignas.randut2002@gmail.com

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ABSTRACT

Examining how Indonesia is implementing human rights under the 1945 Constitution is the aim of this journal. Human rights are basic freedoms that are innate to all people, eternal, and unalienable. No one, not even the state apparatus and government, is allowed to deny, curtail, or take away a person's human rights. Through a number of legal measures, the state has also guaranteed the protection of human rights, as stated in various sections of the 1945 Constitution. Indonesia is required to respect the principles of human rights as stated in the 1945 Constitution as a legitimate state. The purpose of the theory used is to describe the problem's quality and explanation using a qualitative method approach. According to the analysis, Indonesia's implementation of human rights is firmly based on the 1945 Constitution and the Rule of Law, which is consistent with the country's goals as a formal legal state and suggests that the state is dedicated to upholding human rights. The 1945 Constitution states that every person has the right to bodily and spiritual well-being in addition to human rights in the social, political, economic, cultural, educational, and religious spheres.

INTRODUCTION

The focus on "the rule of law" alludes to a government that respects the supremacy of the law in order to impose justice and the truth, leaving no power uncontrolled. Therefore, all nations that uphold the rule of law must adhere to three core values. The supremacy of law, equality before the law, and law enforcement that does not conflict with the rule of law are the three core ideas of the rule of law. (Dutiful legal process).

Apart from the previously mentioned notion of the rule of law, Sri Soemanti feels that a state that upholds the rule of law needs to satisfy multiple requirements. These include: (1) the government's capacity to fulfill its responsibilities must be grounded in laws or regulations; (2) guarantees for citizens' human rights must exist; (3) the division of powers within the state must exist; and (4) the presence of judicial oversight. Meanwhile, Muladi believes that the concept of a legal state should be construed dynamically in contrast to the concept of general law supremacy that has emerged in continental Europe. In the Anglo-Saxon system, the principle of *stare decisis* allows judges to shape the law. (Judge established laws). On the other hand, the principle of the rule of law is more directly tied to the notion of general law supremacy within the continental system, which has experienced significant changes. The most essential part of human rights is the presence and dignity of people. Human dignity is jeopardized when people are subjected to torture, slavery, or poverty, including going hungry. Manfred Nowak identifies four principles of human rights: universality, indivisibility, interdependence, and interrelatedness. (interrelated). Rohana K.M. Smith added another principle: equality and nondiscrimination. Meanwhile, Indonesia places a strong emphasis on another principle, state responsibility. (State responsibility).

LITERATURE REVIEW

The implementation of the rule of law and human rights involves adhering to core principles that ensure justice, equality, and dignity for all individuals. A government that upholds the rule of law must follow three essential values: the supremacy of the law, equality before the law, and non-conflicting law enforcement. Sri Soemanti emphasizes that, in a legal state, governance must be based on laws, human rights must be guaranteed, there must be a clear separation of powers, and judicial oversight must be present to prevent the abuse of power. Muladi adds that the legal state concept should be dynamic, with Anglo-Saxon systems granting judges the ability to shape laws through precedents (*stare decisis*), while continental systems focus on general law supremacy. The protection of human rights is integral to this framework, with Manfred Nowak identifying universality, indivisibility, interdependence, and interrelatedness as key principles, while Rohana K.M. Smith adds equality and nondiscrimination. In Indonesia, there is an additional emphasis on state responsibility to protect human rights, recognizing that the dignity of individuals is at risk when exposed to torture, slavery, or extreme poverty. Therefore, safeguarding these rights and upholding the rule of law are vital for ensuring justice and human dignity in all societies.

METHODOLOGY

This study takes a qualitative approach in order to explain the quality of the issues and their explanations. According to Sugiyono (2017:2), the research method used is Qualitative Descriptive, which involves field research. Regarding the topics under consideration in light of the realities of Pancasila's Human Rights and the 1945 Constitution.

RESULT AND DISCUSSION

Human rights (HR) are fundamental rights that are enduring, universal in application, and intrinsically linked to humanity. Nobody can ignore, diminish, or abolish human rights; not even the state apparatus and government may do so. Human rights must be preserved, respected, and safeguarded. Human rights are protected by the state via the 1945 Constitution and other laws. Regrettably, violations of human rights persist in Indonesia. Human rights violations still happen often in Indonesia. As a nation upholding the rule of law, Indonesia is required by the 1945 Constitution to implement human rights in order to prevent this. A group of rights that people enjoy just by virtue of being God's created beings is known as human rights. Human rights are also a gift from Him, and in order to respect and preserve human dignity and worth, the state, the law, the government, and every individual must all recognize, defend, and protect these rights. HAM is a worldwide concept. It implies that it is available to everyone, irrespective of race, religion, ethnicity, or group. Since the country's proclamation of independence, the Republic of Indonesia's founders have concurred that law – which they describe as a Constitution that upholds human rights – is the foundation of the nation. The 1945 Constitution emphasizes that law (*rechtstaat*), not just authority, is the foundation of Indonesian governance. (*maachstaat*). Like other nations, Indonesia has a founding constitution, such as the 1945 Constitution, the Republic of Indonesia (RIS) Constitution, and the 1950 Constitution, which covers a number of human rights. However, under the 1945 Constitution (before amendments), these rights are dispersed among several pages, especially pages 27–34, rather than being contained in a single charter. This is due to the fact that the 1945 Constitution was drafted several years before to the December 10, 1948, United Nations ratification of the Universal Declaration of Human Rights. The written foundational law of Indonesia is the 1945 Constitution, which consists of the Preamble and the Constitutional Body. From a philosophical (ontological), historical-sociological, systematic, and legal-functional perspective, both elements are discussed. Even if Indonesia is not yet fully included in a human rights list like the Universal Declaration of Human Rights, it shows the country's strong commitment to humanitarian objectives.

The 1945 Constitution's human rights provisions are incorporated into the preamble and articles of the revised text. The 1945 Constitution includes provisions pertaining to human rights in civil, political, economic, social, and cultural domains; nonetheless, the regulations are deemed to be inadequately detailed. A broad summary of the laws pertaining to human rights can be found in the Articles of the 1945 Constitution. As a result, the title of this article is "Implementing Human Rights in Indonesia based on the 1945 Constitution."

HAM, or *mensenrechten* in the Dutch language, is an acronym meaning "human rights." In the end, "rights" are normative features that serve as behavioral guidelines, preserving people's freedom and immunity but also preserving their sense of value and dignity.

Meanwhile, the term "asasi" comes from the phrase "leges fundamentalis" (fundamental laws), which is known in Dutch as "gron rechten," German as "grundrechte," and English as "basic right."

There is a fundamental difference between human and basic rights. Individuals' human rights safeguard them from oppression by either the state or non-state actors. Meanwhile, basic rights defend citizens and residents from state oppression. This means that the concept of human rights encompasses more than just basic rights.

Some experts define human rights from different perspectives, such as John Locke, who defines them as rights that are inherent from birth, naturally attached to every human being, and cannot be violated or are absolute in nature. (Budyanto, 2002: 66). Furthermore, according to Darji Darmodiharjo (2006), human rights are fundamental or basic rights that individuals inherit from the Almighty God at birth. According to Koentjoro Poerbapranoto (1976; Darji Darmodiharjo, 2006), Fundamental rights are human rights. It makes reference to people's inherent rights, which are unalienable and intrinsically tied to who they are. The Law Number 39 of 1999 on Human Rights, on the other hand, declares that in order to honor and preserve human dignity and worth, human rights are a set of rights that are inherent in human nature and existence as God's creatures. These rights are a gift that must be respected, upheld, and protected by the state, government, and every individual. A contemporary ethical concept, human rights are founded on the idea that people should value and respect other people and mankind. This concept creates a moral imperative for how people should treat one another. This moral demand is fundamental to all religions, as they emphasize the importance of valuing and respecting humanity without distinction or discrimination. (Apart from the existence of a caste system in Hinduism). Moral demands are vital, especially when it comes to defending the powerful. As a result, the primary idea behind human rights is unconditional regard for a person's humanity.

Along with an understanding of human dignity as the most noble creature on the earth, and without discrimination based on anything or for any cause. Several essential components of human rights can be inferred from the definition and explanation of human rights that came before, including the following:

1. Human rights are inherent or natural, and cannot be purchased or inherited.
2. Human rights are inherent and granted by God Almighty since conception.
3. Everyone is entitled to the protection of human rights, irrespective of gender, race, religion, ethnicity, political beliefs, or socioeconomic or national origins. They are unique in that every citizen has the same rights within the framework of the country.

4. It is of a supralegal character, cannot be refused, and cannot be broken. No one has the right to restrict or infringe upon the rights of others. Even if their nation passes laws that fail to protect their rights, people still have such rights.
5. Indivisible. Everyone has equal rights, whether they are civil, political, economic, or sociocultural.
6. The sale is pending. This means that the enjoyment of one right affects the enjoyment of another. The enjoying of civil and political rights makes it easier to enjoy economic and social rights.
7. Transcendental rights are extremely important and should not be taken lightly.

The following are some definitions of human rights according to Indonesian legal experts, the MPR-RI Decree No. XVII/MPR/1998, and Law No. 39 of 1999 on human rights.

- a. "Human Rights are the fundamental rights that every individual is born with as a gift from God Almighty," says A. Darji Darmogiarjo. Subsequent rights and obligations are derived from these rights.
- b. According to Padmo Wahjono, a human right is the ability to live in a society that values and respects oneself.
- c. According to the appendix to MPR-RI Decree No. XVII on Human Rights, human rights are related to human value and dignity and are intrinsic, natural, universal, and eternal.
- d. "Human Rights are a set of rights inherent in the essence and existence of humans as creatures of God Almighty and His gift that must be respected, upheld, and protected by the state, government law, and every individual for the honor and protection of human dignity and worth," reads Article 1 of Law Number 39 of 1999 on Human Rights.

The term "Human Rights" was coined in the Middle East long before the West advocated for them under the name "Al Huquuqul Insan." In the West, the term Human Rights was referred to as "Rights of Man," which did not include "Rights of Women." Eleanor Roosevelt replaced it with the more universal and neutral term "Human Rights." (Winarno 2013).

Indonesia has established legal products to protect the human rights of all citizens. Some of these national legal products on human rights include:

- a) The 1945 Constitution outlines the rights to independence, prosperity, and education.
- b) B. The rights and responsibilities of Indonesian citizens are governed by Articles 27 through 34 of the 1945 Constitution.
- c) C. Indonesian nationals' human rights are governed by Law Number 39 of 1999.
- d) D. The Human Rights Courts Law, Republic of Indonesia No. 26 of 2000.

The implementation of the rule of law and human rights (HR) are two interconnected and critical components of democratic governance. Here are some important points about the implementation and consequences of both:

- a) **Application of Fair Law:** In a legal state, all government actions must be consistent with applicable laws. This includes the equitable treatment of all citizens without discrimination.
- b) **Judicial Independence:** In order to uphold justice, the judicial system must be independent and unaffected by political power.
- c) **Access to Justice:** Everyone should have equal access to the legal system to protect their rights. This includes legal services for those who cannot afford them.
- d) **Transparency and Accountability:** The government and public institutions must be open about their actions and accountable to the public.

The outcomes of a rule-of-law state are as follows:

1. **Human Rights Protection.** An effective rule-of-law state can safeguard human rights by enforcing laws and imposing penalties for violations.
2. **Social stability.** Legal certainty makes society more stable and secure, as individuals and groups understand their boundaries and rights.
3. **Enhanced Public Trust** Focusing on the principles of the rule of law boosts public trust in government and institutions.

The implementation of human rights includes:

1. Recognizing and protecting rights.
2. Every country's constitution or fundamental laws must include human rights protections.
3. Human Rights Education
4. Educating society on their rights is crucial for preventing violations.
5. Complaints Mechanism
6. Individuals must be able to report human rights violations on a national and international level.

Human rights have the following consequences:

1. **Social welfare.** The fulfillment of human rights benefits society as a whole.
2. **Political Participation.** A society that is aware of its rights is more likely to actively participate in the political process and decision-making.
3. **Social Justice.** Human rights enforcement contributes to the reduction of social injustice and discrimination.

The most fundamental aspect of human rights is the existence and dignity of humans. Human dignity is jeopardized when people are subjected to torture, slavery, or poverty, including going hungry. Manfred Nowak identifies four principles of human rights: universality, indivisibility, interdependence, and interrelatedness. (interrelated). Rohana K.M. Smith added another principle: equality and nondiscrimination. (nondiscrimination). Meanwhile, Indonesia places a strong emphasis on another principle: state responsibility. (State responsibility). According to Sri Soemantri, the rule of law asserts that no country in the world lacks a constitution or fundamental law. Because the state and the constitution are inseparable. A nation that respects the constitution in

all facets of its national life, government, and society is considered to be a rule-of-law state. Udiono Kusumohamidjojo asserts that it is hard to imagine a nation without the rule of law. Because no government in the twenty-first century considers itself to be a rule-of-law state wishes to be shunned by the international community. In addition, the law can be used to a variety of issues, including political ones.

Article 28 D paragraph (1) states that everyone has the right to legal certainty, protection, assurance, and recognition in terms of upholding their human rights. This constitutional formulation underlines that human rights are fundamental rights that essentially belong to every individual, are universal in nature, and must thus be preserved, respected, and upheld, and cannot be ignored, lessened, or taken away by anybody. Furthermore, human rights encompass fundamental obligations between people and society as a whole in communal, national, and governmental affairs. The constitutional duty described above was then fulfilled with the passage of Law No. 39 of 1999, which addressed human rights. According to Article 1, paragraph 1 of Law No. 39 of 1999, the state, the law, the government, and every individual must respect, uphold, and defend human rights in order to preserve human dignity and worth. Human rights are a collection of rights that are intrinsic to human nature and existence as God's creatures. Human rights must therefore be fully acknowledged, upheld, and implemented. Thus, it is the duty and responsibility of the state apparatus, the government, and other public servants to guarantee that the human rights of every citizen are acknowledged, safeguarded, and respected. Thus, the constitutional provisions controlling human rights indicate that these regulations can offer guarantees and legal protection to every citizen seeking fair legal certainty in a judicial action. In essence, the article forbids the state from treating people unfairly or arbitrarily by breaching their human rights. To execute fair law, all parties, notably law enforcement agencies, must adhere to the notion of due process of law, which includes the acknowledgment of human rights during the pre-trial process.

Next, in the context of Development Law theory, Mochtar Kusumaatmaja asserts that law emerges, grows, and develops in accordance with Indonesian society's pluralistic situation. The Development Law theory emphasizes how law evolves from a tool to an instrument for societal development. According to Mochtar Kusumaatmaja, the primary goal of law, if limited to one aspect, is order. (order). All laws exist to maintain order. This order is essential for the survival of any organized society. In other words, human life cannot be described without or within the context of society. Humans, society, and law are inextricably linked concepts. The Roman proverb "ubi societas ibi ius" – which means "where there is society, there is law" – thus serves as a very apt illustration. The law not only upholds order but also pursues justice, which takes many forms and measures depending on the society and the period. The relationship between the rule of law and human rights, in particular: According to Sri Soemantri, the state's foundation document, the constitution, has at least three (three) significant components. Protecting citizenship and human rights should come first. Determining a

state's fundamental constitutional framework is the second stage. Third, split up and restrict the primary state responsibilities.

The government cannot operate the state arbitrarily if there is a constitution in place. In a state with the rule of law, the existence of a constitution raises the protection of human rights to the philosophical level. This means that in a government that maintains the rule of law, human rights must be respected. Eventually, HAM settled into the democratic political system's legal framework. This is due to the fact that ideas of humanity and social relationships, such as democracy and human rights, have developed over the course of global human civilization. Democracy and human rights are products of humanity's struggle to uphold and attain dignity. Human dignity can only be recognized and upheld to the greatest extent by concepts like democracy and human rights. In a state upholding the rule of law, human rights are safeguarded through legislative and constitutional measures, which are then carried out by the judiciary, which serves as the agent of judicial power. The judicial branch is free and independent in a state that upholds the rule of law, which means that it is unaffected by political power. Judges' decisions are final and cannot be influenced by the legislative, executive, or administrative branches or by the judges' immediate superiors. The explanation makes evident the formal and substantive connection between human rights and the rule of law. The preservation of human rights, a fundamental tenet of the idea of the rule of law, demonstrates the formal relationship. The concept of legality, on the other hand, shows the tangible relationship by requiring state organizers to follow the law in everything they do. The design suggests that upholding human rights is the main goal of all decisions, actions, and attitudes made by individuals in positions of power. Human rights are protected and respected under the rule of law when they are handled by an independent, free court that is not subject to political influence.

Article on Human Rights

Article 28A

Everybody has the right to self-defense in addition to the right to life.

Article 28B

- (1) States that everyone has the right to marry a legal partner in order to have a family and carry on their family tree.
- (2) Every child has the right to life, development, and freedom from discrimination and violence.

Article 28C

- (1) Everyone has the right to self-development, which includes meeting their basic requirements, getting an education, and gaining access to information, technology, the arts, and culture to enhance both their own well-being and the welfare of humanity.
- (2) By fighting for the rights to develop their neighborhood, nation, and country, everyone has the right to advance in life.

Article 28D

- (1) States unequivocally that every person has the right to legal recognition, protection, clarity, and equal treatment.

- (2) It is everyone's right to labor and get just compensation in an environment that values mutual respect.
- (3) Equal opportunities in governance are a right for all individuals.
- (4) Citizenship is a right for everybody.

Article 28E

- (1) States that people are free to choose where they live in the nation, their faith, level of education, and employment. They are also free to go and come back from the nation.
- (2) The freedom of belief allows everyone to express ideas and behaviors that are consistent with their conscience.
- (3) Everyone is allowed to freely mingle, congregate, and voice their opinions.

Article 28F

- (1) States that everyone has the right to information and communication in order to change their social environment and personality. This involves the capacity to look for, obtain, hold, store, process, and share information via any channel that is open to use.**Everyone has the right to family, property, honor, dignity, and personal protection, according to Article 28G. Whether they are practicing or not exercising their human rights, they have the right to feel protected from harm and safe.
- (2) Everyone has the right to seek political asylum abroad and the freedom from torture and other forms of dehumanization.

Article 28H

- (1) States that everyone is entitled to access healthcare, to a healthy environment, and to success.
- (2) All individuals are entitled to benefits and opportunities that advance justice and equality, as well as privileges and preferential treatment.**
- (3) The goal of social security is to enable all people to fully realize their potential as respectable human beings.
- (4) Everyone possesses personal property rights, which nobody should be able to take away from them without cause.

Article 28I

- (1) No human right can ever be denied, including the right to life, the right to conscience and conscience protection, the right to be free from torture, the right to religious freedom, the right to be free from enslavement, the right to have one's identity recognized by the state, and the right to be unaffected by laws.**
- (2) Everyone has the right to be shielded from and free from discrimination.
- (3) Rights of traditional peoples and preservation of cultural identity are upheld in accordance with the advancement of civilization and time.**
- (4) Human rights must be protected and upheld by the state, especially the government, in accordance with democratic legal norms.
- (5) to uphold and safeguard human rights in conformity with democratic legal principles, including the right to exercise such rights

Article 28J

- (1) Respecting others' human rights is everyone's duty on a social, governmental, and global scale.

- (2) In a democratic society, each individual must abide by laws that are imposed purely for the purpose of ensuring that the rights and freedoms of others are acknowledged and respected, as well as to satisfy reasonable demands based on moral principles, religious beliefs, public safety, and order.

The 1945 amendment resulted in a human rights system that is described in Chapters 28a through 28j. No human right is absolute or uneven in Indonesia, the document claims. Since our country is a law-abiding one, the enjoyment of human rights must comply with national legislation.

CONCLUSIONS AND SUGGESTION

Human rights are a set of rights that are innate to man as the highest being created by God. These rights are his legacy and should be respected, treasured, and protected by the state, the legal system, and all people in order to uphold and preserve man's immortality and dignity. Human rights must be properly respected, protected, and upheld in order to achieve this goal. It is the obligation and responsibility of governments, employees, and other public officials to ensure that the human rights of every individual are respected, safeguarded, and maintained. Put another way, it is impossible to characterize human life in isolation from society. In other words, rules and human societies are incompatible ideas. This effectively demonstrated the Roman *pampeo yam societas ibi ius* (where there was law). In addition to preserving order, the law aims to achieve several forms of justice, each with a unique scope and content that varies according to society and the period.

A democratic and just society is built on the foundations of the rule of law and human rights. To guarantee that every person is accorded the respect and rights they deserve, both are necessary. Achieving success in these two areas will support national advancement and social stability. The premise is made evident by the idea of a law state.

ADVANCED RESEARCH

Further research on the "Implementation and Consequences of the Rule of Law and Human Rights" could explore the practical challenges and diverse outcomes of enforcing human rights and the rule of law across different political systems. Future studies could investigate how democratic and non-democratic states interpret and integrate human rights within their legal frameworks and the impact this has on societal justice and stability. Comparative research could examine specific case studies where the rule of law either strengthened human rights or led to unintended consequences, such as state overreach or human rights abuses. Additionally, further inquiry might focus on the evolving nature of human rights in response to global challenges, such as technology, climate change, and migration, exploring how legal systems can adapt to uphold human dignity. A deeper analysis of the balance between national sovereignty and international human rights obligations could also shed light on how states navigate the tension between domestic laws and global human rights standards, particularly in areas like privacy, freedom of speech, and social justice.

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