

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

## The Relevance of Human Rights from a Positive Legal Perspective in Indonesia

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**Abstract.** *Concretely, the state's obligations regarding Human Rights (HAM) are realized by protecting the human rights of every individual from abuse of state power, guaranteeing the existence of every individual's human rights in legal provisions and in their implementation and fulfilling the human rights of every individual, the state must make legal regulations that prohibit these practices. torture to protect every individual from acts of torture. The state must also ensure that every individual is truly free from acts of torture. The state must also truly fulfill the right not to be subjected to actual torture. What is the relevance of human rights from a positive legal perspective in Indonesia? and How is the government's obligations and responsibilities implemented in pholding human rights in Indonesia at this time? The aim is to find out and analyze the relevance of human rights from a positive legal perspective in Indonesia and the implementation of the government's obligations and responsibilities in upholding human rights in Indonesia today. Normative Juridical research methods. Human rights are rights that cannot be separated from one individual to another. Protection and law enforcement in Indonesia need to be considered so that Indonesian people feel safe under the umbrella of law. In state life, human rights are regulated and protected by the laws of the Republic of Indonesia, where every form of human rights violation whether committed by a person, group or agency or even a country will be tried in the implementation of human rights justice, the human rights court takes the trial process through the human rights court procedural law as stated in contained in the Human Rights Courts Act.*

**Keywords:** *Human Rights; Indonesia; Positivie Law; Relevance.*

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## **1. Introduction**

Rights are a normative element inherent in every human being which in its application falls within the scope of the right to equality and the right to freedom related to interactions between individuals or with institutions. Rights are also something that must be obtained. The issue of human rights is something that is often discussed and discussed especially in this reform era. Human rights are more highly respected and given more attention in the reform era than in the pre-reform era. It is important to remember that in terms of fulfilling our rights, we do not live alone and we live socializing with other people. We must not commit human rights violations against other people in an effort to obtain or fulfill human rights ourselves.

Human rights are the basic rights that humans have had since they were born. Human rights can be formulated as rights that are inherent in our nature as human beings, if without these rights, it would be impossible for us to live as humans. These rights are owned by humans solely because he is human, not because of a gift from society or a gift from the state. So human rights do not depend on the recognition of other humans, other communities, or other countries. Human rights are obtained by humans from their Creator, namely God Almighty and are rights that cannot be ignored.

The state's obligations regarding human rights internationally are regulated in various international human rights legal instruments, including, among others, the UDHR, ICCPR and as previously mentioned, the Convention Against Torture (CAT). At the national level, the state's obligations regarding human rights are regulated in national legislation, for example in the constitution and laws. Concretely, the state's obligations regarding Human Rights (HAM) are realized by protecting the human rights of every individual from abuse of state power, guaranteeing the existence of every individual's human rights in legal provisions and in their implementation and fulfilling the human rights of every individual. For example, regarding the right not to be tortured, the state must make legal regulations that prohibit torture practices to protect every individual from acts of torture. The state must also ensure that every individual is truly free from acts of torture. The state must also truly fulfill the right not to be subjected to actual torture.

Over time, the judiciary in Indonesia has experienced changes along with the times, both in its institutions and in its law enforcement system. The definition of law enforcement in a broad sense includes the implementation and application of the law to any violations or deviations from the law committed by legal subjects, as well as in a narrow sense, it is an action against every violation or deviation from statutory regulations. Law enforcement in post-reform Indonesia can be said to have failed because there is still poor implementation of moral values

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and will be distant and isolated from society, especially regarding Human Rights (HAM) issues. Human rights provide moral strength to guarantee and protect human dignity based on law, not based on will, circumstances or certain political tendencies.

The Declaration of Human Rights for the Indonesian state has existed since ancient times but has only been pledged to the basic guidelines of this state, namely those contained in the preamble to the 1945 Constitution, which contains human rights as human beings, both as individuals and as human beings. as social beings in whose lives everything becomes something inherent, and is emphasized in Pancasila from the first principle to the fifth principle. If we look at the formation of the Declaration of Human Rights, the Indonesian people were formed earlier than the UN Human Rights which were formed earlier than the UN Human Rights which were only formed in in 1948. In Law no. 39 of 1999 concerning Human Rights, regulations regarding human rights are determined based on the United Nations Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention on the Rights of the Child, and various other international instruments that regulate human rights. The material of this Law is also adapted to the legal needs of society and the development of national law based on Pancasila and the 1945 Constitution. Meanwhile, in the 1945 Constitution (as amended), issues regarding human rights are specifically included in Chapter X Article 28 A up to 28 J, which is the result of the Second Amendment of 2000.

In foreign countries and in Indonesia in particular, many cases of human rights violations or crimes against humanity have been recorded, where the perpetrators are free to roam and are not even covered by the law, or in other words, the state allows the perpetrators to pass without punishment with impunity. Impunity, namely allowing political and military leaders who are suspected of being involved in cases of serious human rights violations such as crimes of genocide, human crimes and war crimes, to not be tried is a political legal phenomenon that we have witnessed since the last century until today. The study of legal positivism in Indonesia is very important at this time when this nation is and will always continue to develop its civilization to a realm that is in accordance with society's sense of justice. Positivism has given birth to laws in mathematical sketches, solving laws that occur in society based on what is written in the law, crystallizing in its binary position and then the reader must understand that situation and is not allowed to think differently. Meanwhile, the judges decide the case using this text regarding the legal issues at hand. Justice maintained by the rule of law, upholding fundamental human freedoms, equal and inalienable rights with which every human being is born is our essential condition. To Achieve this to promote and protect the civil, political, economic, social and cultural human rights of every woman, man and child.

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## **2. Research Methods**

The approach method used in this research is a normative juridical approach. The purpose of this normative juridical research is an approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations concepts, legal principles and statutory regulations related to the research. In conducting this research, data was obtained through library research, this data collection technique was obtained by conducting literature studies of statutory regulations, court decisions, books, jurisprudential literature and doctrine. The data analysis method is carried out using a normative qualitative analytical approach method, namely data that is obtained, analyzed and explained by discussing and elaborating research results based on norms and doctrines related to the material to be researched to answer the problem. Final step the data in this research is inductive conclusion drawing, namely drawing conclusions from specific things to general things.

## **3. Results and Discussion**

### **3.1. The Relevance of Human Rights from a Positive Law Perspective in Indonesia**

In the perspective of the positive law school, there is no other law except the orders of the authorities or the essence of the positive law school states that legal norms are valid if they are determined by competent institutions or authorities and are based on higher rules, not dependent on moral values. The established legal norms are none other than laws. The Law is a source of law, apart from the Law, it is not law. Positive legal theory recognizes the existence of legal norms that conflict with moral values, but this does not reduce the validity of these legal norms.

As a reflection of the seriousness of the Indonesian state in respecting, protecting and advancing human rights for its citizens, a number of laws were passed, such as:

1. Law no. 8/1999 concerning Freedom of Expression of Opinion;
2. Law no. 39/1999 concerning Human Rights;
3. UU no. 26/2000 concerning Human Rights Courts;
4. Amendments to various laws to bring them into line with human rights principles, such as the Political Parties Law, the Judicial Power Law, the repeal of Presidential Decree no. 11/1963, etc.

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5. Launched the National Human Rights Action Plan (RAN-HAM) in order to provide guarantees for increasing the promotion and protection of human rights in Indonesia by taking into account the traditional, cultural and religious values of the Indonesian people based on Pancasila and the 1945 Constitution.

Normatively, something that is quite encouraging in the protection of human rights in Indonesia is the issuance of Law no. 39/1999 concerning Human Rights and Law no. 26/2000 concerning Human Rights Courts. According to the General Explanation of Law no. 39/1999, The legal position of the Law "is that it is an umbrella for all laws and regulations regarding human rights. Therefore, direct or indirect violations of human rights are subject to criminal, civil and/or administrative sanctions in accordance with statutory provisions." UU no. 39/1999 regulates in detail: the right to life and the right not to be forcibly disappeared and/or not to have one's life taken away, the right to have a family and continue offspring, the right to self-development, the right to obtain justice, the right to self-development, the right to obtain justice, the right to personal freedom, the right to a sense of security, the right to welfare, the right to participate in government, the rights of women, the rights of children, and the right to freedom of religion. All these rights are formulated in Chapter III under the title Human Rights and Basic Human Freedoms (Article 9 – Article 66).

UU no. 39/1999 also regulates Basic Human Obligations. In Article 69 paragraph (2) it is formulated that: "Every person's human rights give rise to a basic obligation and responsibility to respect other people's human rights in a reciprocal manner and it is the government's duty to respect, protect, uphold and promote them." Even in Article 71 it is stated that this problem is not only the government's responsibility, but the government is obliged and responsible to respect, protect, uphold and promote human rights. Apart from this encouraging development of human rights in national legal instruments, in ELSAM's notes there is an irony related to human rights legislation at the regional level. ELSAM noted that regional autonomy based on Law No. 22/1999 which was replaced by Law No. 32/2004 apparently had an impact on many regional legal products, especially Regional Regulations (Perda) which were considered problematic. Therefore, such regional regulations need special attention considering that regional regulations are a unit that cannot be separated from the Indonesian legal system.

Paying attention to the positive law of a country cannot be separated from the legal system in force in that country. Therefore, the basis of the Pancasila state consists of five principles, namely belief in the Almighty God, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation/representation, and social justice for all Indonesian people. Plus the Preamble to the 1945 Constitution, especially the first paragraph which states: "Independence is the right of all nations and colonialism must be abolished", and the second

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paragraph "state independence brings people freedom, unity, justice and prosperity", indicating that Indonesia is a democratic country, upholds the supremacy of law, and respects/upholds human rights. What is outlined in the Preamble to the 1945 Constitution is the direction and politics of law in the macro order, then formalized in the form of statutory regulations by political institutions/DPR and operationalized/implemented by state officials/apparatus in the form of government regulations and other regulations as guidance for bureaucrats.

### **3.2. How to Implement the Government's Obligations and Responsibilities in Upholding Human Rights in Indonesia Today**

State responsibility is a fundamental principle in international law which originates from the doctrine of sovereignty and equality of rights between states. State responsibility arises if there is a violation of an international obligation to do something or not to do something, whether the obligation is based on an international agreement or international customary law. The state's obligation to provide protection, promotion and respect for human rights, which is a concern throughout the world today, is a concept in the modern world after the Second World War.

The basis for legal protection of human rights in Indonesia is contained in the Preamble to the 1945 Constitution paragraph IV, Chapter XA of the 1945 Constitution (Articles 28A to Article 28J), Law Number 39 of 1999 concerning Human Rights, and Number 26 of 2000 concerning Human Rights Courts.

Article 28 I paragraph (4) of the 1945 Constitution clearly states that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. enforcement and fulfillment of human rights is the responsibility of the state, especially the government. Likewise, it is explained in Law Number 39 of 1999 concerning Human Rights Article 71 which states: "The government is obliged and responsible to respect, protect, uphold and promote human rights as regulated in this law, other statutory regulations and laws. international law regarding human rights accepted by the Republic of Indonesia".

Based on the law, it is clear that the government has the responsibility to respect, protect, uphold and promote human rights. Universally, the state bears the primary responsibility for promoting and protecting human rights. Such a responsibility cannot be reduced for political, economic or cultural reasons. Meanwhile, in everyday reality, many violations of human rights

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are committed by the state through its organs or apparatus, both civil and military, who abuse their power (abuse of power).

In Indonesia, various forms of injustice and gross violations of human rights have occurred both during the old order and in the present era or the current reform era. These serious violations have caused enormous suffering for the victims, their families and the community. Moreover, the violations were never revealed objectively, and there was no fair and adequate resolution.

Komnas HAM is expected to be able to maintain independence in Indonesia, this can be viewed from the political aspect and the interests of the rulers in this country. Komnas Ham has duties and authority in the fields of research, counseling, monitoring and mediation. The work carried out must be carried out without any intervention from other parties who are not interested. Based on the understanding above, researchers can explain that Komnas HAM has the duties, functions, authority and responsibility to carry out counseling, monitoring, mediation, research and studies regarding Human Rights. Human rights in French are *Droits de l'homme*, while in English human rights are called human rights, and in Dutch *mensen rechten*. The general understanding of human rights can be interpreted as basic rights given by God Almighty as a gift that every human being has from birth. So human rights cannot be given or taken away by anyone, but must be respected, defended and protected because they are gifts from God that are inherent in every human being.

Law Number 39 of 1999 concerning the Development of the Enforcement of Human Rights is a set of rights that are inherent in the existence of humans as creatures created by God Almighty and which are His gift and must be respected, upheld and protected by the state, government, law, and everyone for the sake of honor and protection of human dignity. It is explained in Law Number 39 of 1999 that human rights are rights that are inherent in humans from the moment they are born and must be respected by everyone, including those who have power. Based on law, Human Rights can provide moral strength to protect and guarantee human dignity, not based on circumstances, certain political tendencies, or desires.

#### **4. Conclusion**

Human rights are rights that cannot be separated from one individual to another. Protection and law enforcement in Indonesia need to be considered so that Indonesian people feel safe under the umbrella of law. In state life, human rights are regulated and protected by the laws of the Republic of Indonesia, where every form of human rights violation whether committed by a person, group or agency or even a country will be tried in the implementation of human

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rights justice, the human rights court takes the trial process through the human rights court procedural law as stated in contained in the Human Rights Courts Act.

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