

Human Rights Protection under the Indonesian Constitution: Progress and Challenges

Irman Putra¹, Arief Fahmi Lubis²
^{1,2}Sekolah Tinggi Hukum Militer AHM-PTHM

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ABSTRACT

This paper examines the protection of human rights under the Indonesian Constitution, focusing on the progress that has been made and the challenges faced. Using a combination of juridical analysis and literature review, it evaluates the effectiveness of constitutional provisions designed to protect human rights and their alignment with international standards. The research highlights significant achievements, including including human rights guarantees in the 1945 Constitution and establishing key institutions such as the National Human Rights Commission (Komnas HAM) and the Constitutional Court. Despite these advances, the study identifies persistent problems such as inadequate law enforcement, systemic discrimination, and limited access to justice. These findings underscore the need for better implementation mechanisms, greater institutional support, and targeted policies to address the gap between constitutional ideals and practical outcomes. The paper concludes with recommendations for future research and policy reforms to strengthen human rights protection in Indonesia.

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Corresponding Author:

Name: Irman Putra

Institution: Sekolah Tinggi Hukum Militer AHM-PTHM

e-mail: irman7275@gmail.com

1. INTRODUCTION

Modern constitutional frameworks in various countries reflect a significant commitment to protecting human rights, which include civil, political, economic, social and cultural rights [1]-[4]. This commitment is seen in the multiple constitutionalisation of human rights through domestic and international legal mechanisms, as well as monitoring and interpretation by relevant human rights institutions. Protecting human rights is essential to upholding justice, ensuring legality, and maintaining law and order in society. The constitutional systems of various countries play an important role in

defining and protecting individual rights and freedoms, with constitutional courts often contributing to the development and promotion of human rights standards through the cases they hear [5]. The evolution of human rights protections from historical documents such as the Magna Carta to modern constitutional provisions underscores the importance of individual liberties in the global legal landscape.

The journey towards robust human rights protection in Indonesia has been significantly shaped by constitutional developments and legal reforms, particularly after the end of Suharto's authoritarian regime

in 1998. The 1945 Constitution, known as the Basic Law of the Republic of Indonesia, underwent four major amendments between 1999 and 2002, which introduced important human rights provisions aimed at harmonising Indonesia's legal framework with international standards [6]. These amendments were part of broader political reforms during the Reformasi era, which aimed to strengthen democracy and the protection of human rights [7]. The first amendment in 1999 marked the beginning of these changes, followed by subsequent amendments that further entrenched human rights principles within the constitutional framework. The establishment of Indonesia's Constitutional Court in 2003 was another important development, providing a mechanism to safeguard the supremacy of the Constitution and protect fundamental human rights [8]. The Court has played an important role in addressing a wide range of issues, from election disputes to the recognition of religious minorities, thereby ensuring that the government adheres to the rule of law [8]. In addition, the enactment of Law No. 39/1999 on Human Rights further strengthened the state's obligation to respect, protect and fulfil human rights, although challenges remain in its implementation [9]. Various national institutions, such as the National Commission on Human Rights (Komnas HAM), the Indonesian Child Protection Commission (KPAI), and the National Commission on Women (Komnas Perempuan), have been established to address specific human rights issues and provide oversight [10]. However, the effectiveness of these institutions remains mixed, with some framework [11]. of them, such as the Truth and Reconciliation Commission (TRC), being disbanded due to ineffectiveness [10].

The integration of international human rights principles into the Indonesian legal system is also evident in the preamble of the 1945 Constitution, which emphasises self-determination, independence, security, social welfare, and education [12]. Despite these advances, Indonesia continues to face significant challenges in upholding human

rights, including legal uncertainty and the need for further institutional reform [13]. The influence of Pancasila, the philosophical foundation of the Indonesian state, remains centre stage in guiding the Constitutional Court and shaping the state's approach to human rights [8]. In addition, the ongoing discourse on human rights in Indonesia mirrors broader debates in the South, highlighting the unique challenges and perspectives of countries in the region [9]. Overall, while Indonesia has made considerable progress in embedding human rights in constitutional and legal frameworks, the journey towards comprehensive protection and enforcement is still ongoing, requiring continued efforts to address existing gaps and challenges [14], [15].

The implementation of human rights protections in Indonesia faces significant challenges, including inadequate law enforcement, systemic discrimination, and limited access to justice, hindering the fulfilment of constitutional guarantees [16]–[20]. Issues such as serious unresolved human rights violations, religious discrimination, refugee rights violations, and lack of legal recognition of local religions underscore the gap between constitutional ideals and practical outcomes. This research highlights shortcomings in the legal framework, enforcement mechanisms, and protection measures, emphasising the need for critical examination to address these gaps and improve the effectiveness of human rights protection, especially for marginalised communities, in Indonesia.

This study provides a juridical analysis of Indonesia's constitutional provisions related to human rights, assessing their alignment with international standards and their effectiveness in practice. In addition, the study also uses a literature review to synthesise scholarly research, legal commentaries, and case studies that highlight the achievements and challenges that remain in the protection of human rights in Indonesia.

2. LITERATURE REVIEW

2.1 Historical Evolution of Human Rights Provisions

The evolution of human rights provisions in Indonesia has been closely intertwined with the nation's political and social history. Initially, the 1945 Constitution focused on state sovereignty and national unity without explicit protection of human rights [7]. However, significant changes emerged during post-Suharto reforms, particularly through constitutional amendments in 1999-2002, known as the Reformasi era, which played an important role in integrating human rights guarantees into the legal framework [11]. These amendments introduced a comprehensive Bill of Rights into the 1945 Constitution, enshrining fundamental rights such as freedom of speech, freedom of assembly, and the right to a fair trial, marking a significant step towards improving human rights protection in Indonesia [12].

2.2 Alignment with International Human Rights Standards

An evaluation of human rights protection in Indonesia in relation to alignment with international standards, such as the ICCPR and ICESCR, shows that while Indonesia has taken steps to harmonise its laws with these treaties [11], there are still significant gaps in implementation and enforcement [17], [20]. Despite having signed various international treaties, the translation of these commitments into effective domestic policies and practices remains a challenge, particularly evident in areas such as freedom of expression and the protection of minority rights [17], [20]. The mismatch between ratification and practical implementation underscores the need for Indonesia to improve mechanisms to ensure the full realisation of human rights in accordance with international standards [11], [17].

2.3 Achievement of Human Rights Protection

The protection of human rights in Indonesia has seen significant advancements through key institutions and legislative

measures. The establishment of the National Commission on Human Rights (Komnas HAM) in 1993 and the Constitutional Court in 2003 have been pivotal in safeguarding human rights and ensuring constitutional adherence [21]. Komnas HAM plays a crucial role in investigating violations and advocating for victims, while the Constitutional Court adjudicates cases related to human rights and constitutional interpretation. Furthermore, legislative progress includes the Witness and Victim Protection Act of 2005 and the Human Rights Courts Act of 2011, aimed at addressing past injustices and providing legal avenues for victims, showcasing Indonesia's commitment to upholding human rights and seeking justice for all [17], [21].

3. METHODS

3.1 Research Design

This research employed a qualitative research design, primarily using juridical analysis and literature review. A qualitative approach is suitable for exploring the complex relationship between constitutional provisions and human rights protection, as well as for examining the nuanced perspectives found in law reviews and scholarly research.

3.2 Data Collection

Data collection for this research involved two main sources: firstly, juridical analysis which included constitutional texts and legal documents such as the 1945 Constitution, amendments, as well as relevant human rights legislation. This included a review of Constitutional Court judgements and official records from the National Human Rights Commission (Komnas HAM). In addition, legislative records and government reports were reviewed to provide context on the development and implementation of human rights provisions. Secondly, a literature review covering scholarly articles and books on Indonesian human rights law, including academic literature, journal articles, books, and theses discussing constitutional provisions, international human rights

standards, and legal reform. Case studies and reports from human rights organisations, legal advocacy groups, and international bodies that provide insights into the practical impact of human rights protection and identify challenges were also analysed.

3.3 Data Analysis

The analysis was conducted in two main stages: first, a juridical analysis which included an evaluation of the legal framework, where the alignment of human rights provisions in Indonesia was evaluated with international standards such as the ICCPR and ICESCR. This involves comparing constitutional guarantees with these international treaties. In addition, an effectiveness assessment was conducted to assess constitutional and legislative measures in protecting human rights, including analyses of case law from the Constitutional Court and reports from Komnas HAM regarding the enforcement and impact of human rights protection. Second, a synthesis of the literature was conducted by thematic analysis, identifying and analysing key themes in the literature related to achievements and challenges in human rights protection, such as legal reform, institutional mechanisms, implementation challenges, and comparative perspectives. A critical review was also conducted to synthesise findings from scholarly sources, case studies, and reports to provide an in-depth understanding of progress and obstacles in the field of human rights.

4. RESULTS AND DISCUSSION

4.1 Constitutional Provisions and Amendments

The 1945 Constitution (UUD 1945) has undergone several amendments, particularly during the Reformation era, which brought substantial changes in human rights provisions. The most important amendments took place in 1999-2002, leading to the incorporation of Chapter XA on Human Rights into the 1945 Constitution.

This chapter covers a range of fundamental rights, including freedom of

expression which guarantees the right to freely express opinions and ideas, freedom of assembly which protects the right to peaceful assembly, as well as the right to a fair trial which ensures that everyone has access to a fair trial. These constitutional changes demonstrate a commitment to aligning Indonesian law with international human rights standards, as outlined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

4.2 Alignment with International Standards

Analysis of Indonesia's constitutional provisions reveals strengths and gaps in terms of alignment with international human rights standards.

The human rights chapter in the 1945 Constitution of Indonesia embodies key principles of international treaties like the International Covenant on Civil and Political Rights (ICCPR), aligning guarantees of freedom of opinion and assembly [12]. Furthermore, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is mirrored in Indonesian legislation, encompassing rights to work, social security, and a decent standard of living, albeit with varying implementation levels [22]. Despite this harmonization, gaps persist, particularly in safeguarding minority rights and promoting gender equality [23]. Efforts to bridge these gaps should focus on raising awareness, overcoming cultural barriers, and enhancing institutional capacity to strengthen the role of international human rights norms in Indonesia [23].

4.3 Achievements in Human Rights Protection

Indonesia has made significant strides in human rights protection through institutional developments such as the establishment of the National Human Rights Commission (Komnas HAM) in 1993 and the Constitutional Court in 2003, which investigate human rights violations and provide judicial oversight, respectively [19], [24]. Legislative reforms, such as the Witness and Victim Protection Act of 2005 and the

Human Rights Court Act of 2011, further demonstrate Indonesia's dedication to addressing human rights violations and ensuring justice for victims by creating mechanisms for legal redress [11], [17]. Despite these advances, challenges remain to fully resolve cases of gross human rights violations, as highlighted by the incomplete resolution of the Semanggi I case, indicating the need for continued efforts to strengthen Indonesia's legal framework and law enforcement mechanisms [25].

4.4 Challenges in Implementation

The protection of human rights faces challenges due to inadequate enforcement mechanisms, as highlighted in various research papers. International human rights law (IHRL) relies heavily on robust enforcement mechanisms, including international treaties, regional bodies, and domestic legal systems, but faces obstacles like jurisdiction issues and resource constraints [26]. Efforts to combat human trafficking involve intricate legal frameworks and international collaboration mechanisms, with challenges such as inconsistent implementation, insufficient resources, and corruption hindering effectiveness [27]. Studies emphasize the importance of enhancing cooperation among states, international organizations, and civil society actors to overcome these challenges and ensure effective enforcement of human rights norms in a globalized world [26]. Additionally, research underscores the need for increased transparency, monitoring systems, and cooperation between governments and human rights organizations to improve the efficiency of legal mechanisms protecting human rights [28].

Discrimination against marginalized groups, including ethnic minorities in Indonesia, persists despite constitutional guarantees, reflecting systemic issues in realizing their rights society [16], [29]. These groups encounter barriers in accessing justice and protection, highlighting ongoing challenges in upholding their rights and ensuring equal treatment under the law [30], [31]. The historical legacy of unequal land

access, legal uncertainties, and discriminatory practices contribute to the perpetuation of social and economic disparities, emphasizing the need for comprehensive policy reforms and inclusive governance frameworks to address these issues effectively [29], [30]. Efforts to combat discrimination and promote social justice require a multi-faceted approach involving legal reforms, awareness-building through education and media, and fostering tolerance and acceptance of diversity within Indonesian society [16], [29].

Access to justice for individuals in rural areas and marginalised communities in Indonesia faces significant challenges due to various factors highlighted in this study. The provision of legal aid is crucial in changing the reality of justice for impoverished individuals, protecting them from arbitrary actions, and ensuring justice for society [32], [33]. Historical legacies, such as the 1870 Agrarian Law, have perpetuated unequal access to land, emphasising the need for comprehensive agrarian reform to strengthen legal protection for marginalised communities [30]. In rural areas, barriers such as poverty, transport issues and traditional medicine practices hinder access to health services, calling for strategies that utilise community engagement and technology to promote health equity [34]. Collaborative efforts between government agencies, educational organisations, and civil society are essential in raising legal awareness among marginalised communities, empowering them to understand legal implications and actively participate in legal processes [35]. The diverse critiques of access to justice issues across different legal disciplines underscore the importance of a coherent field of access to justice scholarship to address the challenges and shape future directions in this emerging field [33].

4.5 Effectiveness of Constitutional Provisions

This analysis confirms that Indonesia's constitutional provisions have made significant progress in aligning themselves with international human rights standards. The inclusion of human rights

guarantees in the 1945 Constitution represents substantial progress in protecting individual freedoms. However, the effectiveness of these provisions depends on their practical implementation. While the Constitution provides a strong legal foundation, real-world enforcement is often inadequate, highlighting the need for stronger implementation mechanisms.

4.6 Comparative Insights

Comparing the human rights framework in Indonesia with other Southeast Asian countries does provide valuable insights into potential improvements. Indonesia, like Malaysia and the Philippines, faces significant challenges in harmonising its constitutional provisions with international human rights standards. For example, Malaysia has enacted specific laws targeting discrimination, such as the Anti-Human Trafficking and Anti-Smuggling of Migrants Act of 2007, which addresses the issue of human trafficking on the Malaysia-Indonesia border [36]. In contrast, Law No. 26/2000 on Human Rights Courts in Indonesia has been criticised for its inability to address serious human rights violations, including legal vagueness and insufficient protection for victims [17]. On the other hand, the Philippines has developed a comprehensive human rights commission with broad powers, which can serve as a model for Indonesia to improve its institutional framework for human rights protection [24]. Moreover, the experience of ASEAN countries such as Thailand, Malaysia, and Singapore in legalising medical cannabis for health purposes highlights the importance of adapting legal frameworks to uphold citizens' right to health, which is an essential component of human rights [37]. In addition, a comparative analysis of human rights recognition and public policy implementation between Indonesia and Myanmar revealed that both countries face challenges such as weak protection systems for victims and cultural factors that hinder effective human rights enforcement [38]. Despite slow progress in the institutionalisation of human rights in Southeast Asia, the region has seen

more countries adopting international standards and authorising regional human rights bodies within the ASEAN mechanism, reflecting the complex interplay between progressive and conservative elements in promoting human rights [36]. By learning from these regional examples and addressing its own legal and enforcement shortcomings, Indonesia can develop a more robust strategy to enhance human rights protection and effectively address implementation challenges.

4.7 Institutional Effectiveness

Institutions such as Komnas HAM and the Constitutional Court play an important role in advancing human rights protection. Komnas HAM has been effective in investigating human rights violations and advocating for victims, while the Constitutional Court has provided important judicial oversight. However, the effectiveness of these institutions is often compromised by issues such as limited resources, political interference, and inadequate support. Strengthening these institutions and ensuring their independence is critical to improving human rights protection (Gani et al., 2024; Subawa et al., 2024).

4.8 Addressing Systemic Challenges

Addressing systemic challenges such as corruption, discrimination, and limited access to justice is critical to improving human rights protection in Indonesia. Strategies to improve law enforcement mechanisms, increase transparency, and support marginalised communities are essential to bridge the gap between constitutional ideals and practical outcomes. For example, implementing anti-corruption measures, providing legal aid to underserved communities, and promoting inclusive policies can help address these challenges and improve human rights protection [19], [20].

4.9 Future Directions

Future research and policy efforts should focus on the following areas:

- a. Increase the capacity and accountability of institutions responsible for the protection of human rights, including increasing

- funding and support for Komnas HAM and the Constitutional Court.
- b. Ensure that constitutional guarantees are effectively extended to all individuals, especially marginalised and vulnerable groups, through targeted policies and programmes.
 - c. Address barriers to accessing justice by expanding legal aid services, improving legal education, and increasing the reach of the justice system to unreached areas.

5. CONCLUSION

An analysis of human rights protections under the Indonesian Constitution reveals substantial progress and remaining challenges. The Reformasi-era constitutional amendments marked a significant step forward by incorporating fundamental human rights guarantees, aligning Indonesia's legal framework with

international standards. The establishment of institutions such as Komnas HAM and the Constitutional Court have also contributed to progress in human rights protection. However, the study also highlights critical challenges, including inadequate law enforcement mechanisms, systemic discrimination, and limited access to justice, which hinder the effective realisation of constitutional rights. These issues reflect the gap between constitutional ideals and the practical implementation of human rights protection. To address these challenges, it is important to strengthen law enforcement mechanisms, enhance institutional capacity, and promote inclusiveness through targeted policies. Future research should focus on evaluating the impact of recent reforms, exploring best practices from other countries, and developing strategies to ensure that human rights protections are fully realised for all citizens.

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