



# JURHIS

Jurnal Mahasiswa Hukum Islam

Faculty of Sharia, UIN Sultan Maulana Hasanuddin Banten



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## *The Concept of Protecting Human Rights After the of Amendment 1945*

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### **Abstract**

*The Amendment 1945 to the Basic Law was an important milestone in Indonesian fundamental law changes. One of the most striking changes is a more comprehensive and clear human rights provision in the constitution. The new articles, Articles 28A to 28J, explicitly regulate human rights, including civil and political rights, economic, social and cultural rights, as well as the right to the living environment. These changes raise questions about the implications and role of these changes in strengthening the protection and promotion of human rights in Indonesia. The constitutional amendment of Indonesia emphasized its status as a law-based state, a concept embodied in the 1945 constitution. The amendment gives greater legal power to protect and promote human rights, and also establishes a national committee on human rights principles and implementation. This article examines the impact of these changes and how these new articles have provided a stronger legal basis to ensure respect for and promotion of human rights. In addition, the article also discusses the country's commitment to human rights principles and efforts to implement them. The study suggests that changes in the constitution have provided a stronger foundation for the protection of human rights in Indonesia, although challenges in its implementation remain.*

**Keywords:** human rights; protection; amendment.

### **Abstrak**

*Amandemen Undang-Undang Dasar 1945 adalah tonggak penting dalam perubahan hukum dasar Indonesia. Salah satu perubahan paling mencolok adalah pengaturan hak asasi manusia yang lebih komprehensif dan jelas dalam konstitusi. Pasal-pasal baru, yaitu Pasal 28 A hingga Pasal 28 J, secara tegas mengatur hak asasi manusia, meliputi hak sipil dan politik, hak ekonomi, sosial, dan budaya, serta hak lingkungan hidup. Perubahan ini memunculkan pertanyaan tentang implikasi dan peran perubahan ini dalam memperkuat perlindungan dan pemajuan hak asasi manusia di Indonesia. Perubahan Konstitusi Indonesia menekankan statusnya sebagai negara berbasis hukum, sebuah konsep yang tertanam dalam konstitusi tahun 1945. Amandemen ini memberikan kekuatan hukum yang lebih besar untuk melindungi dan mempromosikan hak asasi manusia, dan juga mendirikan komite nasional tentang prinsip-prinsip dan implementasi Hak Asasi Manusia. Studi ini menyimpulkan bahwa amandemen telah memberikan kekuatan hukum yang lebih besar untuk perlindungan hak asasi manusia di Indonesia, meskipun ada tantangan dalam implementasi. Artikel ini mengkaji dampak perubahan ini dan bagaimana pasal-pasal baru tersebut telah memberikan dasar hukum yang lebih kokoh untuk memastikan penghormatan dan pemajuan hak-hak asasi manusia. Selain itu, artikel ini juga membahas komitmen negara terhadap prinsip-prinsip hak asasi*

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*manusia dan upaya implementasinya. Penelitian ini mengusulkan bahwa perubahan dalam konstitusi telah memberikan dasar yang lebih kuat untuk perlindungan hak asasi manusia di Indonesia, meskipun tantangan dalam implementasinya masih ada.*

**Kata Kunci:** hak asasi manusia; perlindungan; amandemen

## A. Introduction

Human rights refer to the rights inherent to all individuals from birth or presence within society, irrespective of nationality, religion, race, or gender. These are fundamental and universal rights. The foundational principle of the human rights concept is that every person should have the opportunity to develop their potential in line with their talents and aspirations. In response to the experiences of war and human rights violations, there arose a need to formulate these rights in international documents. In 1948, the Universal Declaration of Human Rights was drafted by member states of the United Nations.<sup>1</sup>

In Indonesia, as in other countries, human rights have been regulated in the constitution, including the 1945 Constitution, the RIS Constitution, and the Temporary Constitution of 1950. Although these human rights are not outlined in a separate document, they are enshrined in various articles, particularly between Article 27 and Article 34.

Law is the most crucial means uphold human rights within a country. To ensure the protection and enforcement of human rights, it is imperative that the law serves as an instrument for public authorities or the state to impose limitations and mutual checks in carrying out their duties, preventing abuses of power. In many cases, the failure to do so becomes the precursor to human rights violations.

Understanding and protecting human rights constitute a fundamental pillar in maintaining and fostering civilized life on both national and international levels. Over time, there has been significant development in the understanding of this concept, including within the context of Indonesia post the amendment of the 1945 Constitution.<sup>2</sup>

The writing of this scholarly work aims to elucidate and analyze the changes in the concept of human rights protection that occurred following the mentioned amendment. The amendment to the 1945 Constitution of Indonesia has provided a stronger legal foundation for protecting human rights in the country. Deductively, the amendment underscores that human rights constitute the foundation of the Indonesian constitution and must be respected and

<sup>1</sup> Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Gramedia Pustaka Utama, 2003).

<sup>2</sup> Tanto Lailam, "Peran Mahkamah Konstitusi Federal Jerman Dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional," *Jurnal HAM* 13, no. 1 (2022): 65, <https://doi.org/10.30641/ham.2022.13.65-80>.



safeguarded by all elements of the state.<sup>3</sup> The consequences of this constitutional change are.

The evolving concept of human rights protection that is broader, more profound, and holistic.<sup>4</sup> In this scholarly work, we will elucidate how the amendment to the 1945 Constitution has provided a robust constitutional foundation for the protection of human rights in Indonesia. Deductive analysis will be employed to identify the key elements in the concept of human rights protection post amendment, as well as how this concept is reflected in various government policies, regulations, and practices.<sup>5</sup>

This study will also explore the implications of these amendments on the development of Indonesian society in the context of understanding human rights. Additionally, considerations regarding the challenges and opportunities faced in safeguarding and enhancing human rights protection in Indonesia in the future will be presented.

Thus, this research will provide a significant scholarly contribution to understanding the evolution of the concept of human rights protection post the 1945 amendment, serving as a foundation for improvement and further development in terms of human rights protection in Indonesia.

## B. Literature Riview

In conducting this research, the author examines previous studies or reviews as a consideration and comparison material. Several studies discussing the concept of human rights post the 1945 amendment have been conducted, both specifically addressing the topic and generally aligning with the focus of this research. The following is a literature review or a review of previous studies in the form of books and journals.

1. Miriam Budiardjo in his book entitled *Dasar - dasar ilmu* It is concluded that human rights refer to the rights inherent to every individual from birth or their presence within society, regardless of nationality, religion, race, and skin color.<sup>6</sup>
2. Review of the notion of the Indonesian rule of law before and after the Republic of Indonesia's 1945 Constitutional Amendment, Cecep Cahya Supena, research journal concluding that acts that violate human rights are illegal under Indonesian law and that the National Human Rights Commission is the body in charge of

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<sup>3</sup> Cecep Cahya Supena, "TINJAUAN TENTANG KONSEP NEGARA HUKUM INDONESIA PADA MASA SEBELUM DAN SESUDAH AMANDEMEN UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945," *Moderat: Jurnal Ilmiah Ilmu Pemerintahan* 9, no. 2 (2023), <https://doi.org/10.25157/moderat.v9i2.3125>.

<sup>4</sup> Fikri Hadi, "Negara Hukum Dan Hak Asasi Manusia Di Indonesia," *Wijaya Putra Law Review* 1, no. 2 (2022): 170–88, <https://doi.org/10.38156/wplr.v1i2.79>.

<sup>5</sup> Arib Putra "Implementasi Hak Asasi Manusia Ideologi Pancasila dan Implementasi Terhadap Persatuan dan Kesatuan Indonesia" *Jurnal HAM* 13, nb.1 (2022): 1, <https://doi.org/10.30641/ham.2022.13.1-14>.

<sup>6</sup> Budiardjo, *Dasar-Dasar Ilmu Politik*.



handling human rights concerns.<sup>7</sup>

3. Poerbopranoto in the Human Rights with Pancasila Basic State State of Indonesia research journal concluding that several essential rights, including the freedom of organization, assembly, and speech, were curtailed during the New Order administration led by Soeharto and that the 1945 Constitution's idea of human rights was not adequately enforced. It is restricted, either verbally or in writing, in order to maintain political and economic stability.<sup>8</sup>

### C. Method

This academic study attempts to analyse the idea of protecting human rights after the 1945 amendment in the framework of the Indonesian Constitution. The analysis of the research is based on a qualitative literature review methodology.<sup>9</sup> Human rights have always been essential to Indonesia's fight and development since the country's independence. However, Indonesia's concept and defence of human rights have undergone a dramatic change since the 1945 amendment.

We may examine data from a variety of sources with this research methodology, such as the Indonesian Constitution, important human rights legislation, decisions made by the Constitutional Court, and relevant academic literature. Through a thorough analysis of the literature, we examine how the notion of human rights protection evolved after the 1945 amendment, look at how these changes have affected Indonesian human rights practise and knowledge, and pinpoint important concerns that are becoming more and more prominent in public discourse. It is anticipated that the research findings will shed further light on how the idea of protecting human rights has changed over time and if these modifications have had a beneficial or detrimental effect on Indonesia's ability to uphold human rights.

### D. Results and Discussion

#### 1. Human Rights

The evolution of human rights may be succinctly divided into three categories: civil and political rights in the first generation of rights; economic, social, and cultural rights in the second generation; and equality rights in the third generation. These rights, in particular those

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<sup>7</sup> Cecep Cahya Supena, "TINJAUAN TENTANG KONSEP NEGARA HUKUM INDONESIA PADA MASA SEBELUM DAN SESUDAH AMANDEMEN UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945."

<sup>8</sup> Koentjoro Poerbopranoto, *Hak Asasi Manusia Dan Pancasila Dasar Negara Republik Indonesia*, Pertama (Jakarta: JB. Wolters, 1953).

<sup>9</sup> Sabit Irfani, Ricky Santoso Muharam, and Sunarso Sunarso, "Keadilan Hak Asasi Manusia Dalam Aksi Kamisan di Indonesia," *Jurnal HAM* 13, no. 1 (April 27, 2022): 81, <https://doi.org/10.30641/ham.2022.13.81-96>.



pertaining to second generation human rights, were created to guarantee that the state actively provides for the preservation and realisation of human rights. Representing civil and political rights, which started in the Classical Greek era, gave rise to the earliest human rights. But contemporary understanding eventually gave rise to human rights, especially civil and political rights. The desire to be freed from the state's and other social forces' absolute authority gave rise to these rights.

Then came the second generation of human rights: the rights to economic, social, and cultural aspects of life. This resulted from the public' demand that the state uphold their fundamental rights. In general, it is a reaction against transgressions and mistreatment resulting from capitalist growth, highlighting the necessity of critical analysis. In the absence of such critique, the idea of individual freedom allows for the exploitation of colonial societies and the working class, even legitimizing it. As a reinterpretation of the two previous generations of human rights, the third generation of rights is based on the idea of solidarity or the right to solidarity. The Universal Declaration of Human Rights' Article 28 reflects this.<sup>10</sup>

The basic rights that are part of the inherent human rights itself contain a variety of rights:

- a. Individual liberties, such as the ability to travel, practice one's own religion, and voice ideas.
- b. Property rights, which are the rights to own, purchase, sell, and make use of things.
- c. The right to equality before the law and in government, also known as the rights of legal equality.
- d. The political rights, which include the freedom to form a political party, the ability to vote and be elected in general elections, and the ability to take part in governance.
- e. The social and cultural rights, such as the freedom to select a school, cultivate a culture, and so forth.
- f. The procedural rights, such as the laws governing detentions, searches, prosecutions, and other proceedings.<sup>11</sup>

Human rights (HAM) are a gift that the state, the law, the government, and individuals must respect, uphold, and protect. They are an inseparable set of rights inherent to human nature and existence as creations of the Almighty. The Universal Declaration of Human Rights, which was published by the United Nations (UN) on December 10, 1948,

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<sup>10</sup> Setiap orang berhak atas suatu tatanan sosial dan internasional di mana hak-hak dan kebebasan-kebebasan yang termaktub di dalam Deklarasi ini dapat dilaksanakan sepenuhnya.

<sup>11</sup> Dardji Darmodihardjo dan Santiaji, *Pancasila*, (Usaha Nasional, 1981), hlm. 80-81.



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officially introduced the idea of human rights. There are thirty articles in this declaration that list human rights and obligations.

Clearly, human rights are inherent rights that cannot be erased or diminished by anyone.<sup>12</sup> Musthafa Kemal Pasha Stating that human rights are inherent from birth and constitute an integral part of one's essence as a gift from Allah.<sup>13</sup> Meanwhile John Locke In line with that perspective, it is asserted that human rights are directly granted by the Almighty Creator.<sup>14</sup> In essence, summarizing both quotations illustrates that human rights are inherent rights bestowed upon individuals from birth, as part of their essence, and given by God as a divine gift.

Human rights are natural and inalienable rights, a gift from God that each and every person, society, and government must honor, defend, and uphold. Thus, maintaining the integrity of human existence in its entirety through efforts to uphold a balance between rights and responsibilities as well as individual and public interests is fundamental to honoring and defending human rights.<sup>15</sup> Human rights are essentially the product of the harmonious and balanced operation of the rights themselves, human duties, and human fundamental responsibilities. Effective management of these three fundamental components can prevent disorder, anarchy, and power abuse in society. These components are present in every individual and are relevant in a variety of contexts, including personal life, community, nation, state, and international relations.<sup>16</sup>

In defiance of Indonesian law, the commission on human rights (Komnas HAM) is entrusted with handling human rights concerns when they arise. Although there are still a lot of unresolved cases of human rights violations in Indonesia, it is hoped that the country's efforts to protect these rights will advance. Munir's terrible death on a flight from Indonesia to the Netherlands is still a key incident in the country's fight for human rights.<sup>17</sup>

## 2. The Concept of Human Rights in The Indonesian Constitution

<sup>12</sup> Ratna Kumala Sari and Sapto Budoyo, "Perkembangan Pengaturan Hak Asasi Manusia (Ham) Dalam Hukum Di Indonesia," *Jurnal Meta Yuridis* 2, no. 1 (2019): 91–100, <https://doi.org/10.26877/m-y.v2i2.4686>.

<sup>13</sup> Winarno, "Paradigma Baru Pendidikan Kewarganegaraan," Bumi Aksara, 2017.

<sup>14</sup> Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia, Edisi Revisi*, 2005.

<sup>15</sup> Hernadi Affandi, "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara," *Jurnal Hukum Positum*, 2019, <https://doi.org/10.35706/positum.v4i1.3006>.

<sup>16</sup> Tia Lahera and Dinie Anggraeni Dewi, "Hak Asasi Manusia : Pentingnya Pelaksanaan Dan Penegakan Hak Asasi Manusia Di Indonesia Saat Ini," *Journal Civics & Social Studies* 5, no. 1 (2021): 90–97, <https://doi.org/10.31980/civicos.v5i1.1055>.

<sup>17</sup> Cecep Cahya Supena, "TINJAUAN TENTANG KONSEP NEGARA HUKUM INDONESIA PADA MASA SEBELUM DAN SESUDAH AMANDEMEN UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945."



Given Indonesia's historical adherence to a constitutional system, which includes preparation, establishment, and implementation, human rights issues are of paramount importance. A.A.H. Struycken's menu the desire of national leaders to establish a lawful state that ensures the protection of human rights is reflected in the constitution, which captures their goals and the evolution of the nation's life. Indonesia makes this idea a reality within the framework of the legal state ideology by protecting its citizens under the Republic of Indonesia's 1945 Constitution.<sup>18</sup>

By establishing a set of guidelines in the constitution, the rule of law seeks to restrain a king's absolute power. Sri Soemalntri A constitution's content usually consists of three basic elements. The guarantee of citizenship and human rights comes first. Second, it is defined how a state's basic framework is established. The third aspect pertains to the constitutional framework's classification and limitation of tasks and authorities, which includes checks and balances.

In the natural law school of thought, the basic conception of human rights includes three things, namely:

1. The life right;
2. The liberty right; and
3. The life right.

But in reality, human rights do not stop there they continue to undergo transformations. Franklin D. Roosevelt on January 6 1941 he presented his ideas with four formulations in the United States Congress forum:

1. freedom of speech
2. freedom of religion
3. freedom of fear and
4. freedom of from want.

Talking about the conception of human rights in the constitution in Indonesia cannot be separated from the lengthy discourse between groups that disagree and groups insisting that human rights provisions be accommodated in the constitutional content. The dissenting group, represented by Soekarno and Soepomo, opposed the inclusion of human rights concepts in the constitution. Meanwhile, the approving group, represented by Moh. Hatta and M. Yamin, supported it. According to Soekarno and Soepomo, the rejection of incorporating human rights concepts into constitutional articles was because the Indonesian state they aimed to establish is based on a familial or mutual cooperation foundation that rejects individualism. In Soekarno's terminology, this is referred to as *Philosophische grondslag*, or in Soepomo's terminology, it is known as *Staatsidee*, which does not use

<sup>18</sup> T. Mulya Lubis, *In Search of Human Right: legal-Political Dilemmas of Indonesia's New Order, 1966-1990*, (Jakarta : Gramedia Pustaka Utama, 1993), 352



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liberal and capitalist ideologies as references. Quoting Soekarno's argument, if we truly base our state on the principles of familial bonds, mutual assistance, cooperation, and social justice, eliminate every trace of individualism and liberalism from it.<sup>19</sup>

Soepomo's argument against the inclusion of human rights in the constitution differs from Soekarno's. Soepomo's rejection is based on his view of the concept of an integralistic state, which he believes is relevant to the character and pattern of Indonesian society. According to this perspective, the state must be united with all its citizens, preventing conflicts among individuals and enabling the resolution of various groups in any sector. It can be concluded from Soepomo's argument against formulating human rights content in the constitution that by making an integralistic state the system of governance, there is no conflict between the legal framework of the state and individual legal structures because individuals are nothing but part of the state's essence.

Mahfud MD and Bambang Sutiyoso support the second interpretation of the figures mentioned above. The claim that the preamble, body, and even the explanations do not specifically mention human rights is the foundation for this. Sutiyoso claims that only the explicit mention of the phrases "rights and obligations of citizens" and the rights of the People's Consultative Assembly (DPR) can be found in the 1945 Constitution.

Meanwhile, Moh. Hatta and M. Yamin's argument for incorporating human rights into the constitution is to ensure that the people feel brave enough to express their opinions, and the government does not act arbitrarily. Furthermore, Moh. Hatta does not object to the rejection of individualism and liberalism; however, he is more cautious, fearing that the desire to grant extensive powers to the state could lead to the newly established state being trapped in the realm of authoritarianism, as argued by Hatta.

Meanwhile, Yamin is more confrontational in rejecting arguments supporting the exclusion of human rights from the constitution. Yamin declares a rejection of all reasons put forward for not including human rights in the conception of the constitution. According to Yamin, fundamental principles are not related to liberalism but represent a legitimization of protection and guarantees of freedom that should be acknowledged in the Indonesian constitution.

Soedjono Sumobroto and Marwoto concur with the viewpoints of Moh. Hatta and M. Yamin, who were previously mentioned. Sumobroto and Marwoto contend that the issue of human rights in society is covered by the 1945 Constitution. Accordingly, Pancasila, the nation's guiding philosophy and worldview, is the source of the implied human rights found in the 1945 Constitution. But in the end, the opposing views of the two parties came to an

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<sup>19</sup> C. Anwar, *Teori dan Hukum Konstitusi*, (Malang: In-Trans Publishing, 2011),. 61





agreement that human rights provisions would remain in the constitution, but they would be written in a straightforward, uncomplicated way and further governed by laws.<sup>20</sup>

As stated in other works of literature, the principles of human rights are expressed in a number of legal frameworks, including: 1) MPR Decrees, which include MPR Decree No. XVII of 1998 on the Views and Attitudes of the Indonesian Nation toward Human Rights and the National Human Rights Charter, 2) Laws, such as the Human Rights Law No. 39 of 1999, 3) Presidential Decrees (Kepres), such as Presidential Decree No. 5 of 2001 on the Establishment of Ad Hoc Human Rights Courts at the Central Jakarta District Court, which was amended by Presidential Decree No. 98 of 2001; 4) Government Regulations in Lieu of Law (Perpu), such as Perpu No. 1 of 1999 concerning Human Rights Courts.

Drawing from various statements made by the aforementioned figures, we can conclude that incorporating human rights into the Indonesian constitution is not an easy matter. Numerous theoretical studies have been conducted from historical, philosophical, and sociological perspectives. Many laws regulating human rights have been established even before their inclusion in the constitution, emphasizing that human rights are of utmost importance and should receive greater attention from the government. This serves as tangible evidence that human rights must be a top priority for the government as they form the foundation of human rights.

### 3. Ham Pre Amendment 1945

The results of the amendments to the 1945 Constitution shed light on Indonesia's increasing attention to and respect for human rights values, which had previously received less attention from the government. The second amendment has even produced a dedicated chapter on human rights, namely Chapter XA. When comparing our constitution with those of other countries, this is a notable achievement for the human rights struggle in Indonesia, as not many countries worldwide include a separate and distinct section on human rights in their constitutions. However, the inclusion of articles regarding human rights as a constitutional guarantee continues to spark debates among academics and human rights practitioners.<sup>21</sup>

After undergoing amendments, the provisions regarding human rights in the 1945 Constitution have undergone significant changes. These changes are reflected in the addition of Articles 28A to 28J, which specifically regulate human rights in the constitution.

These articles demonstrate a stronger commitment to the protection and advancement of human rights in Indonesia. They provide a clearer and stronger legal foundation to ensure respect for individual rights in various aspects of life. Consequently, the Indonesian

<sup>20</sup> Dikutip dari pidato Moh. Hatta pada tanggal 15-7-1945 di BPUPKI berdasarkan naskah yang dihimpun oleh RM. A.B. Kusuma, *Lahirnya Undang-undang*, 345

<sup>21</sup> PKBH Fakultas Hukum Uad



constitution strengthens and clarifies the state's commitment to the principles of human rights.<sup>22</sup>

One characteristic marking modern constitutions is the increased recognition of human rights, regulated within constitutional articles. Out of approximately 120 constitutions worldwide, more than 80 percent have incorporated articles governing human rights, especially those related to the Universal Declaration of Human Rights. This progress is largely a result of interactions among states in the international community, primarily through the United Nations.<sup>23</sup>

Since the declaration of various human rights in the Universal Declaration of Human Rights (UDHR) in 1948, followed by numerous international treaties and conventions on human rights, these rights have gradually been accepted by countries as part of efforts to acknowledge international norms governing human rights in international relations. This reflects a global commitment to protect and promote the fundamental rights of every individual and to regulate international relations based more on human rights principles.<sup>24</sup>

In 1948, the Universal Declaration of Human Rights began to be adopted in several constitutions, including the Constitution of the United States of Indonesia and the 1950 Constitution of Indonesia. These constitutions are considered successful examples in incorporating almost all the articles on human rights found in the UDHR.<sup>25</sup>

However, in 1959, President Soekarno issued a presidential decree reverting the Indonesian constitution to its original form under the 1945 Constitution. This resulted in a more limited regulation of human rights in the constitution. These changes created room for authoritarian elements in the political system, known as Soekarno's "Guided Democracy," leading to concerns that democracy became less robust.<sup>26</sup>

During the New Order regime under Soeharto's leadership, the concept of human rights guarantees in the 1945 Constitution was not effectively implemented. Basic rights, such as the freedom to organize, assemble, and express opinions verbally or in writing, were restricted for the sake of political and economic stability. This was evident in several cases, including the suppression of sympathizers of the Indonesian Communist Party (PKI) in 1965-1967.<sup>27</sup>

<sup>22</sup> Hadi, "Negara Hukum Dan Hak Asasi Manusia Di Indonesia."

<sup>23</sup> Bambang Heri Supriyanto, "Penegakan Hukum Mengenai Hak Asasi Manusia (HAM) Menurut Hukum Positif Di Indonesia," *JURNAL AL-AZHAR INDONESIA SERI PRANATA SOSIAL* 2, no. 3 (August 2016): 151–68.

<sup>24</sup> Winarno, "Paradigma Baru Pendidikan Kewarganegaraan."

<sup>25</sup> Poerbopranoto, *Hak Asasi Manusia Dan Pancasila Dasar Negara Republik Indonesia*.

<sup>26</sup> Indah Sari, "Konstitusi Sebagai Tolak Ukur Eksistensi Negara Hukum Modern," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 1 (2014): 40–60, <https://doi.org/10.35968/jh.v9i1.297>.

<sup>27</sup> Poerbopranoto, *Hak Asasi Manusia Dan Pancasila Dasar Negara Republik Indonesia*.



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Several historical events reflect the Indonesian government's inability to effectively implement the human rights guarantees clearly outlined in the constitution, particularly during periods of authoritarian military rule. One striking event was the incident at the Tanjung Priok port in 1999, which began with a fatwa issued by religious leaders, leading to clashes and violence. Subsequently, there were detentions and kidnappings of political activists post-Kudatuli, illustrating violations of individual rights.<sup>28</sup>

All these events imply a valuable lesson that, despite the clear constitutional provisions on human rights, authoritarian military regimes do not always adhere to these principles as outlined in the constitutional text. This underscores the importance of efforts to ensure effective implementation and robust law enforcement concerning human rights, especially in authoritarian or repressive political situations.<sup>29</sup>

The enactment of Law Number 39 of 1999 concerning human rights was a positive response to the demands for the protection of human rights that had been present since the fall of the Soeharto regime in 1998, after more than three decades of political and economic pressure. It turns out that the law's provisions significantly influenced revisions to the 1945 Constitution, particularly the second amendment that was approved on August 18, 2000, and other changes to the country's legal framework. These modifications included several longer and more in-depth articles on human rights.<sup>30</sup>

In the constitution as a fundamental law, there is no need to impose restrictions on matters that are general or of a fundamental nature. The concept of derogation must be specific, applied only in emergency conditions, and not all rights can be restricted or diminished, as there are certain "non-derogable rights" that cannot be limited or reduced at all, such as the right to life and the right to be free from slavery.

Conceptually, the improvement of articles related to human rights involves dismantling and restructuring based on clear normative substance and formulations, eliminating repetitive and overlapping articles. I disagree with the proposal to frame articles based on "generations of human rights," as stated by El Muntaj (2002:115), because the generations of human rights are merely illusions. When one understands its principles more deeply, such as the principles of indivisibility, interdependence, and inalienability, human rights are not separated and do not evolve in generations throughout history.

In terms of the duty to uphold human rights, amendments to the 1945 Constitution must clearly and gradually govern the state's the government's primary duty to respect,

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<sup>28</sup> Tenang Haryanto et al., "Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum Dan Setelah Amandemen," *Jurnal Dinamika Hukum* 8, no. 2 (2013): 136–44, <https://doi.org/10.20884/1.jdh.2008.8.2.54>.

<sup>29</sup> Susani Triwahyuningsih, "Perlindungan Dan Penegakan Hak Asasi Manusia (Ham) Di Indonesia," *Legal Standing : Jurnal Ilmu Hukum*, 2018, <https://doi.org/10.24269/ls.v2i2.1242>.

<sup>30</sup> Triwahyuningsih.



defend, and fulfill human rights. To make sure that state authorities prioritize their responsibilities with regard to civil and political rights as well as economic, social, and cultural rights, the idea of progressiveness or the advancement of human rights becomes essential. The state's obligation to uphold, defend, and implement human rights ought to be explicitly stated in articles, along with the constitutional foundation for any repercussions (e.g., adding a sentence like "proven to have violated human rights" to Article 7A of the 1945 Constitution). In addition, taking into account possible particular political pressures, it should also be considered whether a complete revision of the 1945 Constitution is preferred (instead of amendments), prioritizing the protection and acknowledgement of human rights in the first or first articles of its framework, before the limitations on state authority and the organizations that wield it.<sup>31</sup>

Considering the different stages of development mentioned above, we can draw the conclusion that Indonesia's recognition of human rights reached its zenith with the passage of the second constitutional amendment. The Unitary State of the Republic of Indonesia (NKRI) must now protect and defend the human rights of its citizens as a result of the Constitution's inclusion of human rights provisions. Prof. Jimly Asshiddiqie claims that the Republic of Indonesia's 1945 Constitution's human rights provisions encompass 27 different topics. Condensed, it controls a number of important factors, such as:

- a. The freedom to practice any religion and to worship the One and Only God in accordance with this belief.
- b. The protection of life and the right to life.
- c. The freedom of expression, information, and education.
- d. The entitlement to procreate (Family rights).
- e. The entitlement to social security and work.
- f. The entitlement to cultural property preservation.
- g. The entitlement to peace and justice.

Therefore, after amendments to the 1945 Constitution, the aforementioned points constitute the essence of human rights. This forms the basis for considering how to uphold and defend human rights in Indonesia.<sup>32</sup>

#### 4. Development Of Human Rights After the Amendment

Before delving into the development of human rights in the reform era, it is important to review the factors leading to constitutional reform in Indonesia. Upon entering the New Order era, the progress of human rights in Indonesia was not very significant. This can be

<sup>31</sup> Dinamika Implementasi, "Hak-Hak Konstitusional Warga Negara Setelah Amandemen UUD 1945 :," 1, no. 1 (2007): 1–19.

<sup>32</sup> G Sumanto, "HAM Dalam Pandangan Islam Dan UUD 1945 Pasca Amandemen (Studi Perbandingan Dengan Pendekatan Maqashid Al-Syariah)," 2016.



attributed to the leadership of Soeharto, which, starting from 1966, was still haunted by the complexity of domestic political, security, and economic issues. In the governance practice, the effective and responsible implementation of human rights greatly depends on the atmosphere of political will, political commitment, and political action by state violators. During that time, the relatively slow development of human rights must be acknowledged due to the influence of a repressive political configuration. Thus, not only were human rights not fully implemented, but their enforcement was also largely neglected.

According to Hans Kelsen, in formulating the concept of the rule of law in connection with democratization and human rights, he proposes four conditions:

1. A state whose existence aligns with the constitution and laws, formulated through parliamentary processes, with its members elected by the people.
2. A state that establishes mechanisms for accountability for every policy and action undertaken by state elites.
3. A state that ensures the independence of the judiciary.
4. A state that safeguards human rights.<sup>33</sup>

In relation to this, regarding the protection and enforcement of human rights, the amendment to the 1945 Constitution provides more comprehensive guarantees. This is in contrast to the pre-amendment 1945 Constitution, which only outlined human rights provisions broadly. In the post-amendment 1945 Constitution, besides outlining human rights broadly, it also includes a specific chapter on human rights, namely Chapter XA, which contains a total of 10 articles from Article 28A to Article 28J.

The amendments' effects confirm that the state, and especially the government, is accountable for the defense, advancement, implementation, and realization of human rights. Although there were horizontal conflicts during the first year of the reform process, particularly in Ambon, Poso, and Kalimantan, where different community groups violated human rights.

The 1945 Constitution's second amendment lists the human rights regulations in Chapter XA, which is a separate chapter with 10 articles and 24 clauses. Regarding the guarantee of human rights enforcement as a cornerstone of the rule of law, these rights are formulated in great detail, encompassing all aspects that are widely acknowledged. It is possible to limit the applicability of every human right specified in Chapter XA of the 1945 Constitution. Article 28J, which serves as the last article for all provisions pertaining to human rights, further strengthens those rights. The 1945 Constitution's methodical human rights laws are arranged in a manner consistent with the Universal Declaration of Human

<sup>33</sup> Majda El Muhtaj, *Dimensi-dimensi HAM Mengurai Hak Ekonomi, Sosial dan Budaya*, (Jakarta: Rajawali Pers, 2008), 60.



Rights, which similarly places restrictions on human rights as a concluding paragraph (Article 29 paragraph 2).<sup>34</sup>

The fundamental rights outlined in Article 28I paragraph (1) and other human rights regulated in the 1945 Constitution's second amendment are not absolute. The restrictions placed on human rights in Indonesia make it abundantly evident that no human right is unrestricted. Four groups of human rights are contained in the 1945 Constitution:

1. Civil and political rights.
2. Economic rights.
3. Social and cultural rights.
4. Right to development.

In addition to the above, human rights provisions include rights categorized as non-derogable rights under any circumstances, which include:

1. Right to life.
2. Right to be free from torture.
3. Freedom of thought and conscience.
4. Right to religion.
5. Right to be free from slavery.
6. Right to be recognized as a person before the law.
7. And the right not to be prosecuted retroactively.<sup>35</sup>

The MPR RI issued Decree No. XVII/1998 regarding Human Rights, which included the Charter of Human Rights of the Indonesian Nation in the special session of the MPR RI in 1998. This was prior to the amendment of the 1945 Constitution, specifically in 1988-1990 during the administration of President BJ Habibie. Law No. 39 of 1999 concerning Human Rights came after this. The UDHR has been accommodated by the provisions found in both pieces of legislation. The 1945 Constitution's amendment, which moved Article 28A to Article 28J, refers to both pieces of legislation and provides a methodical restatement of.

The Republic of Indonesia's 1945 Constitution, which functions as basic law, contains provisions pertaining to human rights (HAM), which are the highest standards that the state is required to uphold. All human rights provisions must be respected and guaranteed in the state's implementation because of their constitutional placement. The state is unable to cite any legal grounds for disregarding these normative requirements because this is a legal outcome of amending the human rights-related provisions of the constitution. Consequently, Article 28I, paragraph 4, of the 1945 Constitution states that it is the duty of the state, in particular, to safeguard, advance, uphold, and fulfill human rights.

<sup>34</sup> Titik Triwulan Titik, *Pokok-pokok Hukum Tata Negara Indonesia*, 343

<sup>35</sup> *Ibid.* 4



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It's crucial to remember that there are restrictions on citizens' freedoms and rights in this country. The constitution's protection of human rights strikes a balance between citizens' rights and obligations. Laws set limits on the exercise of human rights toward other people. Limitations on the application of human rights can only be imposed by legal means in order to guarantee the acknowledgement and observance of other people's rights and liberties as well as to satisfy reasonable requests grounded in moral principles, religious beliefs, public safety, and democratic society. This is the meaning of the phrase "no right that can be exercised absolutely," since our rights are conditioned upon the rights of others, which we are obliged to take into account in accordance with the precepts set forth in Pancasila philosophy.<sup>36</sup>

## E. Conclusion

It is imperative that the Indonesian constitution be amended to better protect human rights. Respecting, defending, and upholding human rights is a state responsibility that should be formulated with a primary foundation in the progressive idea of human rights advancement. This applies especially to the government. One important step to ensuring adherence to human rights standards is the existence of articles that specifically govern the state's obligations and penalties, such as impeachment in cases of human rights violations. Moreover, in the event that the constitution can be significantly amended, the top goal ought to be to give human rights protection and recognition a more powerful and esteemed place inside the framework, superseding clauses pertaining to state institutions and authority. In this manner, we can guarantee that the development and administration of a democratic state that is equitable for all of its citizens is based on a solid foundation of human rights. One of the most important things in a country's life is its constitution. This is crucial because the constitution lays out guidelines for safeguarding citizens' human rights. The historical trajectory of Indonesian constitutions can be divided into four phases: the 1945 Constitution, RIS 1949 and UUDS 1950, the 1945 Constitution, and the 1945 Constitution amendments 1-4. The Republic of Indonesia's 1945 Constitution (UUD NRI 1945), which serves as the fundamental law, contains provisions on human rights (HAM) that are the highest standards that everyone should follow. All provisions pertaining to human rights must be respected and guaranteed for implementation by the state due to their placement in the constitution. This is the legal fallout from changing the human rights-related provisions of the constitution, which removes the state's ability to justify breaking these laws.

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<sup>36</sup> Yeni Handayani, *Pengaturan Hak Asasi Manusia Dalam Konstitusi Konstitusi*,

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