

Constitutional Rights In Indonesia

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Abstract

The constitution plays a pivotal role in the functioning of a modern state, serving as a cornerstone of state governance and ensuring the protection of citizens' rights. It serves as a foundation for the organization and implementation of the state's institutions and functions, thereby obligating the state to safeguard and uphold the constitutional rights of its citizens. In contemporary constitutional practice, human rights have assumed a crucial position. This study aims to elucidate the integration of human rights guarantees as an essential aspect of constitutional rights in Indonesia.

Keywords: Human Rights, Constitutional Rights

Introduction

The tension inherent in human interactions while establishing social order is evident in the complex relationship between individuals, law, and power. This process dates back to the concept of "pactum unionis" introduced by Locke (1690), aiming to create a peaceful atmosphere and limit the inherent human nature as described in "bellum omnium contra omnes" by Hobbes (2017: 4). To ensure the preservation of peace, a "pactum subjectionis" grants legitimacy to a person in power. This power is considered the highest authority in the state, which justifies the state's role as an organization responsible for realizing the ideals of its citizens. Consequently, the state holds sovereignty to prevent and punish any actions that hinder the achievement of these goals. According to Aristotle, the purpose of the state is to foster a good life, and political society emerges due to the existence of virtuous actions (Aristotle, 1998).

The Republic of Indonesia came into existence as a manifestation of the struggle for independence in the archipelago against the oppression of foreign powers. The formulation of the system, structure, and mechanisms of state administration is outlined in the Constitution of the State, established on August

18, 1945. Following Soeharto's resignation from the presidency on May 21, 1998, the reform movement led to the amendment of the 1945 Constitution. To date, four amendments have been made, enabling changes and additions to the structure and content of the constitution, aimed at creating a more democratic, transparent, and highly accountable state. One of the pivotal additions was the inclusion of a dedicated chapter on the recognition of human rights in the Second Amendment of 2000. This provision not only complements the existing guaranteed constitutional rights but also aligns the 1945 Constitution with modern constitutional standards.

In the concept of a constitutional state, the constitution serves as a codification of the highest agreement among human beings, uniting them through a social contract to form a nation. The Constitution not only provides guidance in the state's administrative system, regulating the government's authority and obligations, and guaranteeing the protection of citizens' basic rights (constitutional rights), but it also holds the status of the highest legal source in the applicable legal system.

Constitutional Rights of Indonesian Citizens

The 1945 Constitution, following several amendments, not only guarantees constitutional rights for citizens but also incorporates a special chapter on human rights through the Second Amendment of 2000. As a result, the arrangement of rights includes both citizens' rights and basic human rights. Consequently, individuals who hold citizenship status in Indonesia obtain these constitutional rights not only as citizens but also as inherent human rights. Conversely, individuals who reside in Indonesia but do not possess Indonesian citizenship have their constitutional rights limited to inherent human rights, and they cannot claim rights exclusive to citizens.

All human beings within the territory of Indonesian sovereignty are recognized as having human rights, and the state has an obligation to protect, promote, uphold, and fulfill these human rights. Jimly Asshiddiqie (2007) provides clarity on the distinction between the two types of rights:

"There is a citizen's constitutional right that does not belong to the definition of human rights. For example, the right of every citizen to occupy a position in the government is considered "the citizen's constitutional rights," but it does not apply to non-citizens. Therefore, not all "the citizen's rights" are synonymous with "the human rights," but it can be said that all "the human rights" are also, at the same time, "the citizen's rights."

Theoretically, human rights are understood as inherent rights attributed to individuals by virtue of their humanity, rather than being conferred by any external entity, be it other individuals, the government, or the law. These natural rights are intrinsic and cannot be transferred or revoked. On the other hand, the

rights of a citizen are granted based on an individual's status as a citizen according to the positive law of a country, and they may be acquired through lineage (*ius sanguinis*), place of birth (*ius soli*), or naturalization processes. These rights can be relinquished voluntarily by citizens or revoked by the state.

Based on this understanding, the constitutional rights of citizens guaranteed in the 1945 Constitution of the Republic of Indonesia can be described as follows:

1. Article 27 paragraph (1): All citizens shall be equal before the law and government and shall uphold such law and government without exception. Thus, only Indonesian citizens are eligible to be appointed in state and government posts, including the army and police, through a defined electoral system.
2. Article 27 paragraph (2): Every citizen shall have the right to work and a decent living for humanity.
3. Article 27 paragraph (3): Every citizen shall have the right and obligation to participate in the defense of the state.
4. Chapter XA - Human Rights: All provisions in the Human Rights chapter are the constitutional rights of citizens. The substance of Human Rights will be outlined in the next section.
5. Article 29 Paragraph (2): The State guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and belief.
6. Article 30 paragraph (1): Every citizen shall have the right and obligation to participate in the defense and security of the state.
7. Article 31 paragraph (1): Every citizen shall have the right to education. Paragraph (2): Every citizen is obliged to follow basic education, and the government shall be obliged to finance it.
8. Article 32 Paragraph (1): The State guarantees the freedom of the community in maintaining and developing its cultural values. Paragraph (2): The State respects and maintains the regional language as a national cultural treasure.
9. Article 34 Paragraph (1): The State is responsible for providing care for the poor and abandoned children. Paragraph (2): The State develops a social security system for all people and empowers the weak and

incapable society in accordance with human dignity. Paragraph (3): The State is responsible for the provision of appropriate health service facilities and public service facilities.

In summary, the 1945 Constitution of Indonesia enshrines a range of constitutional rights for its citizens, ensuring equality, freedom, and opportunities for all within the framework of the state's governance. These rights encompass various aspects of life, including political, social, cultural, and economic domains, reflecting Indonesia's commitment to upholding human dignity and promoting a just and inclusive society.

Constitutional rights can also be viewed in reciprocity with the constitutional obligations of the State. The 1945 Constitution of the Republic of Indonesia outlines various obligations and responsibilities of the State towards its citizens, which inherently encompass constitutional rights as integral parts that cannot be separated from these obligations. When examining the 1945 Constitution, we find that the obligations and responsibilities of the state towards the people of Indonesia are as follows:

1. Protecting the whole nation, promoting common prosperity, fostering the intellectual life of the nation, participating in the implementation of world order, and establishing social justice for all the people of Indonesia (Preamble to the 1945 Constitution, paragraph IV).
2. Organizing a state based on the rule of law (Article 1, paragraph 3).
3. Recognizing and respecting the special regional government units and indigenous peoples' customary units and their traditional rights (Article 18B).
4. Protecting, promoting, upholding, and fulfilling human rights (Article 28I, paragraph 4).
5. Guaranteeing the freedom of every citizen to embrace their own religion and to worship according to their religion and belief (Article 29, paragraph 2).
6. Defending, protecting, and maintaining the integrity and sovereignty of the state through the national army (Article 30, paragraph 3).
7. Maintaining security and public order by protecting, serving, and enforcing the law through the state police (Article 30, paragraph 4).
8. Financing basic education (Article 31, paragraph 2).
9. Undertaking and organizing a national education system that promotes faith, piety, and noble character to educate the nation (Article 31, paragraph 3).
10. Prioritizing education budgets of at least twenty percent of the state budget of income and expenditure, as well as from regional budgets and expenditures, to meet the needs of national education (Article 31, paragraph 4).

11. Advancing science and technology while upholding the values of religion and national unity for the advancement of civilization and the welfare of mankind (Article 31, paragraph 5).
12. Promoting the national culture of Indonesia amid world civilization by guaranteeing the freedom of society in maintaining and developing its cultural values (Article 32, paragraph 1).
13. Respecting and preserving local languages as national cultural treasures (Article 32, paragraph 2).
14. Using the earth, water, and natural resources for the greatest prosperity of the people (Article 33, paragraph 3).
15. Caring for the poor and abandoned children (Article 34, paragraph 1).
16. Developing a social security system for all people and empowering weak and incapable society according to human dignity (Article 34, paragraph 2).
17. Providing healthcare facilities and appropriate public service facilities (Article 34, paragraph 3).

These constitutional obligations underscore the commitment of the State towards creating a just and prosperous society that upholds the principles of democracy, human rights, and social welfare.

Human Rights as Constitutional Rights

The debate over whether the Indonesian state's constitution should contain specific rules on human rights was a significant topic during the session of the Indonesian Independence Investigation Board (BPUPKI). The founding fathers held differing opinions regarding the fundamental philosophy of human rights. Soekarno and Soepomo believed that human rights, rooted in individualism and liberalism, contradicted the essence of mutual cooperation and kinship embraced by the Indonesian people. In the BPUPKI trial records, Sukarno expressed his rejection of the proposed inclusion of human rights in the 1945 Constitution, stating:

"Therefore, if we truly want to build our nation on kinship, cooperation, understanding 'gotong royong', and social justice, we should abandon all thoughts of individualism and liberalism." (Arinanto, 2005:8).

Soepomo echoed a similar sentiment with the statement:

"...in the Constitution, we cannot include articles that are not based on kinship, although in fact, we are eager to include them...if we do so, in fact, the Constitution is fundamentally based on the nature of the individual, which would contradict its very construction..." (Mahfud MD, 2006: 190).

On the other hand, Moh. Hatta and M. Yamin argued for the inclusion of human rights in the 1945 Constitution. Moh. Hatta stated:

"It would be beneficial to include, in one of the articles, for example, a chapter concerning citizens, where besides the rights that have been granted to them, it should be explicitly mentioned that every citizen should not be afraid to voice their opinions. It is also necessary to mention the right to assemble, convene, or coordinate, which would help prevent the state from becoming an authoritarian power..." (Mahfud MD, 2006: 190).

Ultimately, this debate resulted in a compromise with limited provisions on human rights for citizens, with a partial emphasis on their implementation under the rule of law.

During Indonesia's struggle for independence, the international political landscape was marked by the end of World War II and the establishment of the United Nations. The Charter of the United Nations reaffirmed the belief in the basic rights and dignity of every human being. On this basis, the United Nations declared the Universal Declaration of Human Rights on December 10, 1948. The Declaration aimed to serve as a universal standard for all peoples and nations to achieve.

Some parties categorize human rights into two groups: civil and political rights on one hand, and economic, social, and cultural rights on the other hand. This categorization has historical roots and can be traced back to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which are separate international treaties forming part of the normative international law based on the Universal Declaration of Human Rights. While the declaration itself is not legally binding, the ICCPR and ICESCR become enforceable when a state consents to be bound by these treaties.

Additionally, Karel Vasak, a French lawyer, categorized human rights into three generations, not to prioritize one right over another but as a historical record of the development of human rights. The first generation represents the demand for freedom (*Liberte*) during the seventeenth and eighteenth centuries, focusing on civil and political rights and individual freedom from government intervention, often referred to as "negative rights." The second generation seeks economic, social, and cultural rights with an emphasis on the "right to" social equality, requiring active state involvement in fulfilling these rights. The third generation is characterized by demands for the right of solidarity or common rights as a manifestation of brotherhood (*Fraternite*), aiming to create an economic order and international law guaranteeing the rights to development,

peace, natural resources, environment, and the common heritage of mankind (Pusham UII, 2008:15-17).

However, this categorization of rights has faced criticism for reinforcing the notion of a hierarchy of human rights and creating an illusion that some rights are more important than others. This debate over the conception of rights contradicts the Vienna Declaration and Program of Action adopted in 1993, which affirms that all human rights are universal, indivisible, interdependent, and interrelated. The international community must treat human rights in a fair, equal, and balanced manner without any hierarchy or distinction (Vienna Declaration and Program of Action, 1993). In essence, all human rights are interconnected and must be upheld with the same emphasis and commitment by all nations.

Similarly, in order to address the concerns of poor and developing countries, the Vienna Declaration and the 1993 Action Program have emphasized the right to development as an integral part of fundamental human rights, following Vasak's identification of these rights as the generation of solidarity. Although human rights adhere to universal principles of indivisibility, interdependence, and interconnectedness, they are not absolute and may be subject to restrictions as long as these restrictions are stipulated by law, respect the rights and freedoms of others, and serve the just demands of morality, religious values, security, and public order in a democratic society. This provision on restrictions is in line with Article 29 paragraph (2) of the Universal Declaration of Human Rights, which states:

"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society."

The international Covenant Bill of Rights also includes some restriction clauses. Further elaboration on these limitations can be found in the "Siracusa Principles, on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights," compiled by the American Association for the International Commission of Jurists in 1985. The identified restrictions include those related to the law, democratic society, public order, public health, public morals, national security, the rights and freedoms of others, the interests of private lives of individuals, and restrictions on public trials.

The Universalist theory, which is based on the conception of Natural Law, asserts that human rights are universal and inherent to individuals regardless of the values or culture of a society or country. According to John Locke (1690):

"Men being, ..., by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the power of another, without his own consent. The only way whereby any one divests himself of his natural liberty is by the way of joining a union into a society for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that is not of it."

While human rights do not require recognition from any specific authority, such as a particular state, it is challenging to impose this concept on various traditions, cultures, and religions (cultural relativism). Some argue that the Universal Declaration on Human Rights is influenced and shaped by Western culture due to its founders being from the victorious World War II countries and abstaining from the Eastern bloc countries.

Despite these challenges, the set of agreed-upon natural rights in the Universal Declaration has become the foundation for subsequent international human rights instruments and has influenced national legal systems. During Indonesia's political situation leading to the formation of the United Republic of Indonesia (RIS) in 1949, both the 1949 RIS Constitution and the 1950 Constitution adopted most of the human rights principles contained in the Universal Declaration of Human Rights.

After the first General Election of 1955, the Constituent Assembly, established under Article 134 of the 1950 Constitution, convened to draft a permanent Constitution for Indonesia. The debate on human rights conceptions arose during this process, leading to the formulation of 88 human rights issue formulas. These debates revolved around classifying certain rights as civil rights or human rights, deciding which rights should be deleted or combined, and determining the procedural decision-making. However, the discussion at the Constituent Assembly on 19 August 1958 became inconsequential due to the issuance of Presidential Decree No. 150 on 5 July 1959, which restored the 1945 Constitution.

Following the failure to refine the human rights formula in the state constitution, the beginning of the New Order government saw a renewed desire to establish a more comprehensive recognition of human rights. During the general assembly of the Provisional People's Consultative Assembly (MPRS), it was decided, through MPRS Decree Number XIV/MPRS/1966, to form an ad hoc committee responsible for compiling the details of human rights. The ad hoc committee successfully formulated the Charter of Human Rights and the Rights and Responsibilities of Citizens, but the document was not ratified. The fate of the Charter was sealed after the formation of the MPR resulting from the 1971 general election, as MPR Decree No. V/MPR/1973 declared MPRS Decree No. XIV/MPRS/1966 null and void.

With the advent of the 1998 reform era, which marked the end of authoritarian and militaristic governance, the arrangements for human rights gained momentum and led to MPR Decree No. XVII/MPR/1998 on Human Rights, which was subsequently translated into Law No. 39 of 1999 on Human Rights. This Human Rights Act provides a normative understanding of human rights as follows:

"A set of rights attached to the nature and existence of human beings as creatures of God Almighty, and is a gift that must be respected, upheld, and protected by the state, law, government, and every person for the honor and protection of human dignity and prestige."

This definition is crucial since there is no universal boundary for providing a legal understanding of human rights. International human rights treaties do not offer a universally applicable definition of reference. However, in Indonesia, human rights are normatively recognized and regulated in the Human Rights Act, where they are identified and classified as the right to life, family rights and continued descent, self-development rights, the right to equity, privacy, security, welfare, and the rights of the child.

While the original manuscript of the 1945 Constitution had already conceived several principles of human rights as "citizen rights," the formation of the Human Rights Act represents a manifestation of the reform movement's struggle based on the concept of human rights sourced from international law. Interestingly, when considering the year of its formation, the term "human rights" was first adopted in the Human Rights Act compared to the 1945 Constitution of the Republic of Indonesia. The new human rights provisions were added to the 1945 Constitution after the second amendment in 2000. In theory, the law should be based on the constitution as the highest source of law; however, it can be observed as a procedural anomaly that the Human Rights Act "precedes" the constitution in regulating human rights. In practice, the 1945 Constitution of the Republic of Indonesia might have been drafted by adopting human rights sourced from the Human Rights Act.

The 1945 Constitution, after its second amendment in 2000, now includes a specific chapter on human rights, Chapter XA. The substance of human rights regulated in this chapter includes:

1. The right to life and the right to survive and live (Article 28A).
2. The right to form a family and to continue one's offspring through legitimate marriage (Article 28B paragraph 1).
3. The right of every child to survival, growth, and development, and protection from violence and discrimination (Article 28B Section 2).
4. The right of every person to develop themselves through the fulfillment of basic needs, education, and benefiting from science, technology, art,

- and culture to improve their quality of life and welfare (Article 28C Paragraph 1).
5. The right of everyone to collectively promote themselves in the struggle for their rights and to develop their society, nation, and country (Article 28C Paragraph 2).
 6. The right of everyone to equitable recognition, guarantee, protection, and legal certainty, and equal treatment before the law (Article 28D Paragraph 1).
 7. The right of everyone to work and receive fair and reasonable remuneration and treatment in the employment relationship (Article 28D Paragraph 2).
 8. The right of every citizen to equal opportunities in the government (Article 28D Paragraph 3).
 9. The right of everyone to citizenship (Article 28D Paragraph 4).
 10. The freedom of religion and worship, the right to choose education, job, citizenship, and residence within the territory of the state, and the right to abandon them and be entitled to return (Article 28E Paragraph 1).
 11. The right of everyone to freedom of belief, expression of thoughts, and attitudes according to their conscience (Article 28E Paragraph 2).
 12. The right of everyone to freedom of association, assembly, and expression (Article 28E Paragraph 3).
 13. The right of everyone to communicate and obtain information to develop their personal and social environment, and the right to seek, obtain, possess, store, process, and convey information through all available channels (Article 28F).
 14. The right of everyone to personal, family, honor, dignity, and property protection under their control, and the entitlement to a sense of security and protection from the fear of violating their rights (Article 28G Paragraph 1).
 15. The right of everyone to be free from torture or degrading treatment that violates human dignity, and the right to seek political asylum in other countries (Article 28G Paragraph 2).
 16. The right of every person to live in a safe and prosperous environment, to obtain a healthy and sanitary living environment, and to be entitled to health services (Article 28H Paragraph 1).
 17. The right of everyone to have equal opportunities and benefits to achieve equality and justice (Article 28H Paragraph 2).
 18. The right of everyone to social security, enabling their complete development as dignified human beings (Article 28H Paragraph 3).
 19. The right of every person to private property, which cannot be arbitrarily taken over by anyone (Article 28H Paragraph 4).
 20. Certain rights, such as the right to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from slavery, the

right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive law, are human rights that cannot be reduced under any circumstances (Article 28I Paragraph 1).

21. The right of everyone to be free from discriminatory treatment on any basis and entitled to protection against such discriminatory treatment (Article 28I Paragraph 2).
22. The cultural identity and rights of traditional societies are respected in harmony with the times and civilizations (Article 28I Paragraph 3).

The passage you provided seems to discuss various aspects of human rights as enshrined in the 1945 Constitution of the Republic of Indonesia. Here is a revised version of the passage:

In a special chapter on Human Rights, the 1945 Constitution of the Republic of Indonesia explicitly stipulates that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government (Article 28I Paragraph 4). To uphold and protect human rights in accordance with the principles of a democratic constitutional state, the implementation of human rights is guaranteed, regulated, and enshrined in legislation (Article 28I Paragraph 5). This means that in the enforcement and protection of human rights, it must be carried out within the bounds of the law, ensuring that the freedoms granted therein are not interpreted as allowing individuals to act without obeying the applicable laws or engaging in unconstitutional conduct.

Moreover, in the context of human rights enforcement, the constitution also places an obligation on individuals to respect the human rights of others. Article 28J states that:

1. Everyone shall respect the human rights of others in order to maintain a harmonious society, nation, and state.
2. In exercising their rights and fulfilling their obligations, each person shall be subject to restrictions stipulated by law, aimed solely at securing the recognition and respect of the rights and freedoms of others and to meet fair demands based on moral judgment, religious values, security, and public order in a democratic society.

Historically, it has been found that the concepts of the Universal Declaration on Human Rights have influenced various constitutions of states, including the 1945 Constitution of the Republic of Indonesia. The presence of the Universal Declaration, often seen as "the general principles of law recognized by civilized nations" (Shelton, 2013:193), has inspired international

regulations on human rights and influenced the constitutional provisions of various countries.

An important point to note is that the use of the term "human rights" in the Indonesian constitution not only grants constitutional rights to citizens and foreigners but also holds legal implications that open up avenues for citizens (even foreigners) to transcend the limits of state sovereignty through international law forums. Article 7 Paragraph (1) of the Human Rights Law provides that everyone is entitled to use all national legal remedies and international forums to address any violations of human rights guaranteed by Indonesian law and international human rights law accepted by the Republic of Indonesia.

Conclusion

The 1945 Constitution of the State of the Republic of Indonesia has effectively guaranteed the constitutional rights of its citizens. Beyond being specific to citizens, the constitution also acknowledges various human rights and corresponding responsibilities. The primary duty of respecting, protecting, and fulfilling human rights lies with the state. However, it is equally important for individuals to actively engage in upholding human rights and recognize that safeguarding human dignity is essential for the preservation of human existence.

As Indonesia upholds the principle of a legal state, the recognition and protection of human rights must be carried out constitutionally and through procedural law to prevent anarchy and violations of human rights. The opening of the 1948 Constitution aptly affirms the secured protection of human rights as a constitutional right of citizens. Consequently, the legal system governing the state's administration must be fully capable of promoting, protecting, fulfilling, and enforcing human rights. By adhering to these principles, Indonesia can foster a society that respects and upholds the dignity and rights of all individuals, ensuring a just and equitable society for its citizens.

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