
The Problem of Legal Protection for Human Rights Activists

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Abstract

The Constitution of the Republic of Indonesia of 1945, both in the preamble and torso, has clearly stated the protection of human rights, including human rights activists. This study aims to describe and examine the concept of the 1945 Constitution of the Republic of Indonesia as the Indonesian constitution, which mandates the state to protect human rights activists. The research method used is normative research with a qualitative analysis approach, with data collection carried out through literature studies. The results show that respect, protection, and guarantee of human rights are characteristics of the Indonesian legal state, especially after the amendment. However, because in more detail, the legal protection of human rights activists is only in the National Commission on Human Rights Regulations, not in a law or government regulations, the protection is still weak. Therefore, it cannot fulfill the rights and protect human rights activists as mandated in Article 27 paragraph (1), Article 28 paragraph (1), Article 28I paragraph (1), Article 28J paragraph (1), and article. 28J paragraph (4) of the Constitution of the Republic of Indonesia of 1945.

Keywords: *protection, human rights, human rights activists*

I. INTRODUCTION

After the amendment of the 1945 Constitution of the Republic of Indonesia in 1999-2002, Indonesia has further established itself as a constitutional democracy that recognizes and respects human rights. Furthermore, the affirmation of Indonesia as a constitutional democracy coincided with the broader and comprehensive rules regarding human rights from Articles 27 to 31 of the 1945 Constitution of the Republic of Indonesia. Therefore, in this article, everything about human rights gets guaranteed. This aspect is not only about civil and political rights but even regarding the right to public welfare, for example, rights in the economic, social, and cultural fields.

The existence and recognition at the constitutional stage are limited to the rules that provide that human rights exist and are recognized and protected but implemented. On the other hand, in terms of implementation, it also depends on equipment regarding institutions and the mechanisms and commitments of state organizers. In Umar's terms, if it is interpreted broadly, the objectives of the Indonesian state, as mentioned above, have consequences, including giving a mandate to the state to ensure the protection of human rights. The protection of this human right can be in the form of normalization in laws and regulations, and no less important is its implementation in the practice of state and social life (Ma'ruf, 2019).

According to the Partnership, the number of human rights activists who have been victimized to quell the turmoil of resistance is always soaring. The facts conveyed by Wahana Lingkungan Hidup Indonesia, during 2018, 163 human rights activists were legally processed. In addition, the number of victims was 283 from 86 cases of violence against Human Rights Activists, 7 of whom were killed in 2019. The number of cases that occurred in 2020 was 2,814. The National Commission recorded the 2015-2021 period on Violence against Women; 87 female activists were victims. Nineteen complaints entered the Human rights commission in 2020, in suppression, legal proceedings, arrests, and even deaths. The 2019-2020 range of the Asian Forum also noted that there were 1,073 human rights violations in more than 20 countries in Asia, including Indonesia. As a result, 3,046 human rights activists, including families and institutions, were hit by digital or physical attacks. The development of the situation and conditions for human rights activists in Indonesia has not shown

guaranteed protection by the state. In 2003 based on the data of the Impartial agency, there were about 30 cases of violence against human rights activists. A year later, in 2004, there were 152 cases.

The human rights commission 2020 received nine complaints about human rights activists, and Amnesty International revealed that there were 99 cases of attacks on human rights activists in 2021. Human rights concerns can have a wide variety of consequences. These consequences can threaten national integration and make the Indonesian people and nation suffer greatly. Then how do we respond to cases of human rights violations in Indonesia? The community, in this case, must play an active role. In addition to the public's response to these human rights violations, it can also be dynamic behavior. Dynamic behavior is finding solutions to human rights enforcement problems, which adjusts capacity and uses procedures following applicable law. According to the preamble, independence is required to lead a free life. This is stated in the "Declaration of Human Rights Defenders" dated December 9, 1998, by the United Nations General Assembly.

This study aims to describe and examine the concept of the 1945 Constitution of the Republic of Indonesia as the Indonesian constitution, which mandates the state to protect human rights activists. Specifically, the elaboration of the objectives to be achieved in this study includes: first, answering how the conception of recognition of respect, protection, and guarantee of human rights in the state of law. Second, it describes the existence of human rights Activists in national and international law. This article uses normative research methods with a qualitative analysis approach. This research can also be called doctrinal research, which focuses on qualitative analysis. Norms, in this case, are about the principles, rules of laws and regulations, court decisions, agreements, and doctrines. It is said to be normative because the law is judged as something autonomous in nature. Its applicability is then determined by the law rather than by factors outside it. Based on that statement, the law has been judged to be perfect and final, so it is worth implementing.

II. METHOD

The research method of this paper is normative. A normative research method is a process of research and studying law, as a rule, legal principles, norms, legal doctrines, legal theories, legal principles, and other literature to answer the legal problems under study. The data analysis method used is qualitative analysis. This qualitative analysis can be interpreted using research methods that produce descriptive analytical data. Its data sources include secondary data. This data consists of primary, secondary, and tertiary legal materials whose results can be obtained through library research but do not use field studies (field research).

III. RESULT AND DISCUSSION

Indonesia is a country of law that prioritizes the welfare of its people because the essence of the Indonesian state is that its legal state can be identified by the submission of the people and rulers to the existing and applicable laws (Lestari & Arifin, 2019). The applicable law has an obligation. The state should protect and serve citizens. Relations between citizens give rise to obligations that the state must fulfill. It arises based on the consequences of relations between the state and citizens that are extensive and quite diverse. One of them has legal obligations born of human rights (Wajdi dan Imran, 2021). The obligations referred to here do not escape the regulation of human rights. Human rights are fundamental because part of each individual is inseparable. With human rights enforcement, the country has met the country's requirements of law (Afifah & Ilham, 2019).

The essence of every human being is to have the same rights, namely human rights. This right arises from the moment the human being is born. The right to life, the right to a sense of security, and the right to freedom in all forms of enforcement are included in the fundamental right. This right must be respected by all and applied universally (Takariawan & Putri, 2018). In the context of guarantees of protection and respect for human rights, it is expressly stated in Article 28 I paragraph (4) of the 1945 Constitution of the Republic of Indonesia namely the responsibility of the state is to provide respect, protection, and guarantees to human rights, especially the government. In the enforcement of human rights, it is commonly known that individuals or community groups participate in fighting for human rights by often terming them human rights activists or what is now called the '*Human Right Defenders*'. Defender of human rights was used after the Declaration of Defenders of Human Rights in the united nations General Assembly Resolution 53/144 of 1998. The existence of human rights activists is recognized in the products of international law.

Let us look at the definition of human rights activists. It can also be seen in the *European Union Guidelines on Human Rights Defenders*, a person, several people, and part of the community who promote and protect human rights and fundamental freedoms that are universally recognized. Human rights activists make efforts to safeguard civil-political rights, publicity, economic, social, and cultural rights. Activists also carry out propaganda about protecting the rights of members of a commune, such as the unity of tradition and culture. However, this does not include both individuals and groups who carry out propaganda against violence.

Human rights activists today are known as human rights defenders. Meanwhile, according to Standard Norms and Regulations Number 6 concerning Human Rights Defenders as stipulated in the Regulation of the National Commission on Human Rights Number 4 of 2021 concerning Ratification of Norms and Regulations Standards on Human Rights Defenders. According to this rule, human rights defenders are individuals, groups, and community organizations promoting and protecting universally recognized human rights and fundamental freedoms. In addition, it is included in the sense that anyone is a survivor who carries out human rights defense either on oneself, family, or group, supported or not supported by the human rights defenders organization, but does not give up on the situation and then transforms to carry out human rights defense work or related to the promotion and enforcement of human rights.

Indonesia has not yet made regulations specifically regulating the protection of human rights activists. Law Number 39 of 1999 concerning Human Rights (Human Rights Law), regarding the protection of human rights activists, is not explicitly and explicitly stated. However, articles 100 - 103 of Chapter VIII on Community Participation in the Human Rights Law provide opportunities for everyone, groups, political organizations, community organizations, and other community institutions to take an active role in protecting, enforcing, and promoting human rights.

After the amendments in 1999-2002, the torso text of the 1945 Constitution of the Republic of Indonesia contained articles relating to human rights much more complete than before. In turn, efforts to uphold human rights, including protecting human rights activists, are a constitutional mandate. Therefore, it needs to be realized so that the constitution can live in a society (*the living of law*) instead of just as a text on paper. Moreover, it is also a means of state commitment to the international agreement of the *Universal Declaration of Human Rights* in 1948, in which Indonesia was incorporated.

Arief Hidayat said that 5 (five) characteristics distinguish the state of Pancasila law from other legal states. One of which he elaborated that, in essence, he said Indonesia is a family country that recognizes the right of individuals to know human rights by prioritizing national interests over the interests of individuals. In the legal state of Pancasila, an effort to create a balance between national and individual interests is to give the state the possibility to intervene if it is deemed necessary to achieve the goals of the national and state life system with the principles of Pancasila (Rahmatullah, 2020). The widespread guarantee of human rights with the emergence of several articles in the 1945 Constitution of the Republic of Indonesia is a step forward in building a state legal foundation to strengthen the contract between the people and the ruler.

The implementation of protection has not been as expected. Many policies and regulations made by the rulers are not following the concept of human rights. However, all of that is not implicated and only applies on paper. The most important factor for law enforcement that is adequately implemented is law enforcement actors, both in judicial and non-judicial processes (Aprita & Hasyim, 2020). In reality, states are often unable to fully carry out their obligations to respect, protect and guarantee human rights, thus encouraging many parties, both individually and in groups, further to enhance the protection and promotion of human rights. Usually, they are known as human rights activists or *Human Rights Defenders*. This word was used after the 'Declaration of Human Rights Defenders' in the United Nations General Assembly Resolution No. 53/144 of 1998.

The implementation of the rules is hindered if several factors affect it, at least if the residents do not dare to make defenses, even for themselves and the surrounding residents. This problem also occurs in the *circle* of officials on duty and even involves citizens, so it is still human rights activists who are victims. Attacking human rights activists in various ways, committing *unlawful killings*, and acts of persecution and murder of minority groups. This then reflects the weak protection and fulfillment of human rights defenders who pay attention to the sense of justice in society. Human rights activists are the subject of pressure, intimidation, and other acts of violence over their activities

in spreading the weaknesses of the government system. Then came the statement that when the rights of human rights defenders are violated, it means that the rights of citizens, in general, are also threatened. As the Secretary-General of the United Nations said at the Conference of Non-Governmental Organizations on September 14, 1998, the bottom line is that the declaration's basic premise is that when human rights activists' rights are violated, then our rights are in danger, and we are less secure.

Human rights activists are a part of society that can spur the state in terms of fulfilling obligations in the international sphere, namely guaranteeing and respecting human rights. Indonesia has some general rules regarding human rights. Some of these regulations can be used as a basis for the rights and responsibilities of individuals and groups as part of efforts to protect and promote human rights, including Law Number 39 of 1999 concerning human rights (Articles 100-103), Law Number 26 of 2000 concerning Human Rights Courts (Article 34), and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

In the above regulations, if we look closely, there is not a single article that clearly and in detail mentions the rights of human rights activists. Furthermore, as well as in some of these regulations it does not expressly provide for the protection of all activities carried out by human rights Activists as mandated in the 'Declaration of Human Rights Defenders.' Legal loopholes like this can lead to human rights violations against human rights activists. Therefore, regarding all activities carried out by Human Rights Activists, this is very vulnerable to experiencing human rights violations, whether in the form of obstacles, threats, or violence.

The specific regulation on human rights activists is based on the effectiveness of regular and continuous work carried out by human rights activists. The effectiveness of a human rights activist's work can be seen from their number and high activity in defending human rights. This includes criticizing the government for the promotion of human rights. This activity is regular and continuous, so his role as a human rights activist shows efficient, effective, and consistent work. Regarding the special protection of human rights defenders, the National Commission on Human Rights has issued National Commission on Human Rights Regulation No. 5 of 2015 concerning procedures for the protection of human rights defenders (National Commission on Human Rights Regulation No. 5/15) and Regulation of the National Commission on Human Rights Number 4 of 2021 concerning Ratification of Standard Norms and Regulations on Human Rights Defenders which contains Standard Norms and Regulations Number 6 concerning Human Rights Defenders. In Article 9 of the National Commission on Human Rights Regulation Number 5/15, in essence, the protection provided to Human Rights Activists is only 'limited to referrals' both to request protection from the Witness and Victim Protection Agency and other institutions such as the Indonesian National Police, ministries or other institutions. If only a reference can be given, what is the fate of the Human Rights Activists? Meanwhile, in the Regulation of the National Commission on Human Rights Number 4/21, standard norms and regulations on Human Rights Defenders (Standard norms) are determined.

Standard norms identify threats to Human Rights defenders that can be in the form of harassment and/or attack: a. resulting in physical, psychic, sexual, verbal, and death disturbances; b. to property, whether private property or organizations used in Human Rights defense activities; c. digital against individuals or organizations that carry out Human Rights defense activities; d. by discriminating against personal Human Rights Defenders; e. with arbitrary use of the law; and f. with the deprivation of economic, social, and cultural rights.

If there is a threat/attack on a human rights defender as above or even such threat/attack has manifested itself in action. Paragraph 161 of the standard norm states that the state is obliged that human rights defenders must obtain complete protection from the state. The violations committed against them will be immediately and thoroughly investigated and restored, and if necessary, awarded indemnity or appropriate compensation. Meanwhile, paragraph 168 Of the Standard norm mandates that the Witness and Victim Protection Agency have a significant task in protecting witnesses and victims. In Article 27, paragraph (1) of the Constitution of the Republic of Indonesia 1945, it has been explained that all of the country's citizens have the same position in the eyes of the law. Then continued with Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads that everyone has the right to fair legal certainty, not only that everyone is entitled to recognition, guarantees, and legal protection. From these two articles alone, the position of Human

Rights Activists should be fought from the legal side because they are the frontline in defending Human Rights.

The National Commission on Human Rights began demonstrating its defense and protection for Human Rights Activists. Regarding the case of Human Rights Activists, throughout 2021, Komnas Hak Asasi Manusia, in this case, received 17 complaints of cases (6 criminalization and one application for the prosecution of Munir's case, then 10 cases regarding threats and intimidation). The causes of the cases experienced by Human Rights Activists are state legal obligations that have not been implemented optimally, and there is no recognition of human rights activists and guarantees of protection for Human Rights activists. Finally, the government's and the public's understanding of the presence of Human Rights activists have not been maximized, and there is no understanding and capacity building of police officers, prosecutors, and judges about the protection of Human Rights defenders. Although it may be that what this National Commission on Human Rights is doing as a follow-up to the standard norms it has created as outlined above, the compressive power is certainly not vital.

Under the constitution, the Declaration of Human Rights Defenders also emphasizes that the state is the party most responsible for protecting Human Rights Activists. Unfortunately, the situation of Human Rights Activists is getting worse. The National Commission on Human Rights has also been only treated if it is only as a firefighter. It should be the state's responsibility, while the National Commission on Human Rights is positioned as a catalyst and facilitator. The National Commission on Human Rights seeks to encourage the protection of Human Rights Defenders in three aspects. First, prevention is carried out by establishing the National Standards for The Regulation of Human Rights Defenders by the National Commission on Human Rights, improving the ability of employees to provide complete services, training for police officers, dissemination of information for the community, paralegal training by non-governmental organizations, and other cooperation.

The government's responsibility as the state operator, as stated in Article 28J paragraph (4) of the 1945 Constitution of the Republic of Indonesia, is the protection, promotion, enforcement, and fulfillment of Human Rights. However, if we look at the number of Human Rights Activists treated with no humanity at all. Then what is the responsibility of the state towards them? International law can be proven by the existence of international human rights instruments that regulate human rights and fundamental freedoms, namely the Universal Declaration of Human Rights 1948, the International Covenant on Civil on Political Rights in 1966, and the Declaration of Human Rights Defender. Protecting humanitarian activists can also be upheld through state responsibility, the United Nations, and its bodies (Elias et al., 2021).

The principle of the state of the law is used to protect Human Rights. This is done so that an instrument arises with the task of supervising and prosecuting in case of human rights violations. Regarding human rights, this also puts the people as determinants in state life (Bustamam & Badri, 2018). Indonesia, a nation that has experienced colonization, made the nation's founders aware of the meaning of Human Rights in-state activities. These fundamental principles and rights are placed in the 1945 Constitution of the Republic of Indonesia. This spirit appeared first in the Universal Declaration of Human Rights. In addition, human rights that are recognized, respected, and protected have been pioneered by the pioneers of Indonesian independence, which is found in a legal state that has democratic thinking (Aswandi & Roisah, 2019). In the rule of law and law enforcement, there must also be regulation and enforcement of Human Rights. Applying the principle of law enforcement to achieve justice will require law enforcement officials, if it is interpreted broadly, not to forget the support of effective and efficient administrative law (Agustina, 2018).

The state bears the most significant responsibility regarding human rights, both in the context of law enforcement and its violations. This responsibility is absolute and cannot be curtailed or revoked for political, economic, or cultural reasons (Setiyani & Setiyono, 2020). In essence, in respecting, protecting, and guaranteeing Human Rights, the constitution has recognized every individual who fights for his rights, in this case, human rights activists, to get protection from the state, in this case, the government. Especially in Article 28 C paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it has been stated that *"Everyone has the right to advance himself in fighting for his right collectively to build his society, nation, and state."* This regulation indicates the presence of guarantees from the state. The guarantee provides opportunities for each person to fight for their rights, including guaranteeing the protection and promotion of human rights. This includes protecting

Human Rights Activists. Moreover, that obligation is coupled with the international obligation of each country to respect, protect and guarantee Human Rights. Regarding this matter, it is based not only on an obligation to obey regulations but also on morality that upholds human dignity and dignity. In essence, this is an obligation for everyone. Because of this, efforts to uphold Indonesia's constitutionalism are part of a complete unity to uphold Human Rights, including protecting Human Rights Activists.

IV. CONCLUSION

Respect, protection, and guarantee of Human Rights are characteristics of a legal state. This has begun to be seen from the preamble to the 1945 Constitution of the Republic of Indonesia, the torso of the 1945 Constitution of the Republic of Indonesia, especially after the amendment. Enforcement of Human Rights in terms of protecting Human Rights Activists when carrying out their roles when viewed from the norms in Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning Human Rights Courts, and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims has not yet appeared. Meanwhile, when viewed the regulations issued by the National Commission on Human Rights, namely the Regulation of the National Commission on Human Rights Number 5 of 2015 concerning procedures for protecting Human Rights defenders and the Regulation of the National Commission on Human Rights Number 4 of 2021 concerning Ratification of Standard Norms and Regulations on Human Rights Defenders which contains Standard Norms and Regulations Number 6 concerning Human Rights Defenders, it has been regulated by the existence of legal protection for Human Rights Defenders.

Because the legal protection of Human Rights Defenders is only in the Regulations of the National Commission on Human Rights, not in an Act or at least a Government Regulation, according to the author, it is still weak. Therefore, it has not been able to fulfill the rights and protect Human Rights Activists as mandated in Article 27 paragraph (1), Article 28 paragraph (1), Article 28I paragraph (1), Article 28J paragraph (1), and Article 28J paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Even if this is seen in the international sphere, it has been regulated in the Declaration of Human Rights Defenders. In fact, in Indonesia, there are still many cases of torture of Human Rights Activists.

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