

Basic Human Rights Instruments in the Perspective of International and National Law

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Info Articles	Abstract
<p>Article History Received: 2024-09-06 Revised: 2024-09-16 Published: 2024-09-30</p> <p>Keywords: <i>Enforcement of Human Rights, Human Rights Instruments, Human Rights.</i></p>	<p>The enforcement of human rights in Indonesia currently faces a number of significant challenges. For example, economically, a large portion of Indonesians is trapped in poverty, and many people commit human rights violations due to economic factors. Human rights issues are not only a national issue but also a global one. The existence of human rights can have an impact on fundamental obligations, both of which are interconnected and go hand in hand. In this context, the solution offered to address the challenges of human rights enforcement in Indonesia is to reconstruct the national legal system, including restructuring law enforcement institutions. This step can improve the national legal system and significantly impact the mechanism for enforcing human rights.</p>

I. INTRODUCTION

Every individual is endowed with fundamental rights inherent within them. These are referred to as Human Rights (HAM), as regulated in Law Number 39 of 1999 concerning Human Rights. Human Rights are rights that are part of the essence and existence of humans as creatures of God Almighty. Human Rights are a gift that must be respected, upheld, and protected by the state, law, government, and every individual. In modern society, the idea of human rights is the primary foundation underlying justice, equality, and the dignity of every person. Fundamental instruments concerning human rights, consisting of various declarations, conventions, and international agreements, are not merely legal documents but also reflect humanity's shared commitment to protecting and advancing the rights that belong to every person from birth. This article will examine these important instruments in depth, from the well-known Universal Declaration of Human Rights to the various specific agreements governing civil, political, economic, social, and cultural rights. The fundamental foundation of human rights (HAM) is a crucial aspect in protecting and fulfilling the rights of every individual without discrimination. These international conventions, treaties, and declarations serve as a guide for countries in

developing policies and legal systems that respect human values. By understanding the basic instruments of human rights, we can recognize the universal rights of every individual and ensure that these rights are respected and protected fairly throughout the world.

II. RESEARCH METHODS

This research uses a normative legal approach, exploring and analyzing existing theories. The data used are secondary literature sources, drawn from various references relevant to the topic under study. Furthermore, data collection techniques were conducted through case studies. The collected data were then analyzed descriptively and qualitatively, with the analysis process being comprehensive and systematic.

III. RESULTS AND DISCUSSION

A. Research result

Based on research conducted using a normative legal approach through literature review, several key findings were obtained regarding basic human rights instruments, both internationally and nationally.

First, the research shows that basic human rights instruments are divided into two main categories: international instruments and national instruments. International instruments

serve as global guidelines governing the recognition and protection of human rights, while national instruments play a role in concrete implementation within a country, including Indonesia.

Second, in the international sphere, several important instruments serve as the primary foundation for upholding human rights. Among them is the 1948 Universal Declaration of Human Rights (UDHR), which serves as the global normative basis for guaranteeing basic human rights without discrimination. In addition, there are two main covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which regulate civil, political, economic, social, and cultural rights in more detail.

Third, this study also found that other international instruments, such as CEDAW, play a crucial role in eliminating discrimination against women and strengthening gender equality. This demonstrates that the development of human rights instruments is dynamic and continually adapts to the protection needs of vulnerable groups.

Fourth, in the Indonesian national context, human rights instruments have been comprehensively regulated through various legal instruments, such as Law Number 39 of 1999 concerning Human Rights, the 1945 Constitution, and MPR Decree No. XVII/MPR/1998. These instruments affirm that the state has an obligation to respect, protect, and fulfill the human rights of every citizen.

Fifth, in addition to legal instruments, this research also found the existence of human rights enforcement institutions in Indonesia, such as the National Commission on Human Rights (Komnas HAM), the Human Rights Court, the National Commission on Violence Against Women (Komnas Perempuan), and the Indonesian Child Protection Commission (KPAI). These institutions serve as mechanisms for monitoring, protecting,

and enforcing the law against human rights violations.

However, research findings indicate that human rights enforcement in Indonesia still faces various challenges, particularly those related to economic factors, a weak legal system, and the suboptimal performance of law enforcement agencies. Therefore, reconstruction of the national legal system and strengthening of law enforcement institutions are necessary to ensure effective human rights protection.

B. Discussion

Basic Human Rights Instruments are a series of legal instruments or documents used to protect and uphold Human Rights (HAM). These instruments can be international or national laws that regulate the recognition, respect, and protection of the fundamental rights of every individual. Overall, basic human rights instruments are divided into two groups: International Human Rights Instruments and National Human Rights Instruments. International Human Rights Legal Instruments consist of a collection of laws, treaties, or conventions created at the international level with the aim of protecting and guaranteeing human rights. Countries that ratify these instruments are legally bound by the applicable terms.

In the UN charter, efforts to fulfill, protect, and respect human rights universally are expressed many times, especially in Article 1 Paragraph (3): "To promote international cooperation in resolving international problems in the economic, social, cultural and humanitarian fields, and to promote and enhance respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (Jacob J Herlin, 2023). This commitment was then continued by the UN through the establishment of legal instruments regulating human rights.

1. International Human Rights Instruments

First, Universal Declaration of Human Rights. The Universal Declaration of Human Rights (UDHR) was drafted in 1948 by the international community and was a significant step forward. Countries around the world agreed and accepted the norms contained in the UDHR through the United Nations. The UDHR became a framework for human rights objectives based on the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social, and Cultural Rights. The UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) in 1948, which is a landmark document in the history of human rights. This document conveys the global desire for all people to enjoy equal dignity and rights without regard to race, color, sex, language, religion, social or national origin, property, birth, or other status (Kusmaryanto, Carolus Boromeus, 2021).

Although the International Covenant on Civil and Political Rights (ICCPR) is declarative and does not have the force of law, it declares important rights such as the right to life, liberty, and security of person, the right to be free from slavery and torture, the right to equality before the law, the right to express opinions, the right to religion, the right to found a family, the right to education, and the right to participate in the government of one's country. Second, the International Covenant on Civil and Political Rights (ICCPR) (Suyahnan, 2024). Countries are bound by the International Covenant on Civil and Political Rights (ICCPR), an agreement made by three different countries to respect individual civil and political rights, such as the right to life, the right to practice religion, the right to speak, the right to assemble, the right to vote, and the right to a fair legal process.

The UN General Assembly adopted the ICCPR on 16 December 1966 through Resolution 2200A (XXI). The treaty entered into force on 23 March 1976, after being signed by 35 states or their accedents. As of June 2022, the ICCPR has been

ratified by 173 states, with six remaining states not yet signatory, including the People's Republic of China and Cuba. North Korea is the only country to have ever attempted to withdraw from the treaty. As part of the International Bill of Human Rights, along with the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR), the ICCPR is considered a landmark document in the history of international law and human rights.

The UN Human Rights Committee is responsible for overseeing the ICCPR. It assesses reports from state parties on the implementation of these rights. States must report one year after joining the treaty, and then every four years the committee requests further reports. The committee typically meets at the UN headquarters in Geneva, Switzerland. The Covenant addresses: The right to life; the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; the right to liberty and security of person; the right not to be imprisoned merely for inability to fulfill contractual obligations; the right to equality before the courts and tribunals; and the right not to be subjected to retroactive application of criminal law.

Third, the International Covenant on Economic, Social and Cultural Rights (ICESCR). The International Covenant on Human Rights includes two main treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The ICESCR, adopted on 16 December 1966 and entered into force on 3 January 1976, is an international legal instrument aimed at protecting and promoting economic, social and cultural rights worldwide. The ICESCR, along with the ICCPR, forms a universal legal framework linking civil and political rights with economic, social and cultural rights in the global human rights system and serves to ensure their interconnectedness. The rights to an adequate standard of living, health, education and fair

employment are among the fundamental rights protected by this convention, with the provision that states parties are responsible for respecting, protecting and fulfilling these rights progressively, taking into account the limitations of available resources.

Articles 13 and 14 of the ICESCR emphasize the right to available, accessible and quality education, where primary education should be free and compulsory, and secondary and higher education should be accessible to all without discrimination. The Covenant recognizes that these rights must be realized progressively and that states may differ in the provision of the resources necessary to realize these rights. Therefore, the ICESCR adopts a progressive capabilities approach. This approach allows states to implement their responsibilities based on available resources and within an appropriate timeframe. The Committee on Economic, Social and Cultural Rights is tasked with implementing the ICESCR. It reviews periodic reports from States parties on the implementation of the Covenant and makes recommendations and general comments regarding the interpretation and application of the rights contained in the Covenant. The Committee also communicates with States parties to improve the implementation of these rights.

The purpose of this reporting and discussion system is to ensure accountability and transparency. Overall, the ICESCR serves as a crucial instrument for promoting and protecting economic, social, and cultural rights at the international level, affirming that these rights are fundamental human rights that must be respected and fulfilled by all states. The Covenant emphasizes that economic and social rights are closely linked to civil and political rights. It also emphasizes the importance of a comprehensive strategy for achieving prosperity and social justice worldwide.

Fourth, the Convention on the Elimination of All Forms of Discrimination Against Women

(CEDAW) (Muh. Risnan, 2023). On December 18, 1979, the UN officially ratified the CEDAW convention.

This convention entered into force on September 3, 1981, after being ratified by 20 countries. Currently, more than 100 countries have signed the convention. As one of the international human rights documents, CEDAW plays a vital role in improving the status of women, who constitute half of the world's population. This convention is based on the United Nations' mission to affirm commitment to fundamental human rights, the dignity of the individual, the worth of the person, and the equal rights of men and women. This document also explains the concept of equality and how to achieve it.

CEDAW not only establishes international law on women's rights but also creates an action plan for states to ensure the implementation of these rights. This convention defines women's human rights as part of human rights, standards of obligations, and women's human rights themselves. States have a responsibility to eliminate discrimination against women. Here are some important points regarding the rights and obligations of states listed in the CEDAW convention. In this convention, "discrimination against women" is defined as "any distinction, exclusion or restriction based on sex which has the effect or purpose of impairing or nullifying the recognition, access to or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural and sexual spheres."

2. National Human Rights Instrument

Article 1 of Law Number 39 of 1999 concerning Human Rights states that basically "Human Rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld by the state, law, government, and every person, for the sake of honor and

protection of human dignity and honor". In the article above, it has a clear meaning that the role of the state, government, and also the law is very important in fulfilling Human Rights or Human Rights in our own country. Why is that? Because basically anyone born into this world is the same in the eyes of God Almighty. It is also appropriate to have the same rights and the same obligations. Fair or Justice is the foremost word to create equality for each individual, especially in terms of Rights and Obligations (Hidayat, Arief, Wibiwo, 2022).

Of the many countries in the world, Indonesia is one of the sovereign states that adheres to the Universal Declaration of Human Rights. Therefore, Indonesia has legal instruments to uphold human rights, namely Pancasila as the foundation of the state, the 1945 Constitution after amendments, the People's Consultative Assembly Decree, laws, government regulations, and so on. Thus, the goals of many things are achieved. Among them are the right to life, the right to family and procreation, women's rights, children's rights, the right to justice, the right to security, the right to self-development, the right to welfare, the right to participate in government, and the right to freedom.

The explanation of human rights in Pancasila contains the idea that God Almighty created humans with two aspects: sociality (society) and individuality (personality). Therefore, every person has an obligation to recognize and respect the human rights of others. This means that each person's freedom is limited by the human rights of others. Therefore, the state and government have a responsibility to protect human rights, guarantee human rights, respect, and defend every individual human being and citizen without any discrimination.

In addition to the legal instruments for enforcing human rights in Indonesia, there are also human rights enforcement institutions in Indonesia to handle and manage human rights issues, such as the National Commission on

Human Rights, the Human Rights Court Commission, the National Commission on Anti-Violence against Women, and so on.

In Indonesia itself, there are legal instruments concerning the enforcement of human rights. These include the following:

1. MPR Decree No. XVII/MPR/1998 on Human Rights MPR Decree No. XVII/MPR/1998 on Human Rights which was confirmed at the People's Consultative Assembly session held on November 13, 1998 as one of the forms and efforts of the central government to face the problem of human rights violations that are increasingly rampant in Indonesia and regarding the resolution of human rights violation cases. In addition, the presence of this MPR Decree is an effort to answer the demands of reform that took place in 1998. The contents of the MPR Decree No. XVII/MPR/1998 on Human Rights are:
 - a. Article 2 reads: Assigns High State Institutions and all Government Apparatus to respect, uphold and disseminate understanding of human rights to the entire community.
 - b. Article 3 which reads: Assigns the President of the Republic of Indonesia and the People's Representative Council of the Republic of Indonesia to ratify various United Nations instruments on Human Rights, as long as they do not conflict with Pancasila and the 1945 Constitution.

2. Pancasila
Pancasila, as the foundation of the Indonesian state, embodies the idea that humans were created by God Almighty with two aspects: individual (personal) and social (societal). Based on the content of Pancasila itself, Pancasila upholds the dignity and worth of humans as God's

creatures, thus ensuring that everyone has an obligation to respect the human rights of others.

3. The 1945 Constitution of the Republic of Indonesia (UUD 1945)

Human Rights in the political, economic, social and cultural fields are strongly emphasized in the articles of the 1945 Constitution. These articles are:

- a. Article 28 C paragraphs (1) and (2);
- b. Article 28 A;
- c. Article 28 B paragraphs (1) and (2)
- d. Article 28 E paragraph (1), (2), (3)
- e. Article 28 D paragraphs (1), (2), (3) and (4);
- f. Article 28 G paragraphs (1) and (2)
- g. Article 28 F
- h. Article 28 1 paragraph (1), (2), (3), (4) and (5)
- i. Article 28 H paragraphs (1), (2), (3) and (4)
- j. Article 28 J paragraphs (1) and (2)
- k. Article 27 paragraphs (1), (2), and (3);

Apart from that, in Indonesia itself there are institutional instruments for enforcing human rights.

Among them are the following:

1. Indonesian Child Protection Commission (KPAI)

The foundation that became the initial formation of KPAI was Presidential Decree Number 77 of 2003 which was an update of Presidential Decree Number 36 of 1990 after the ratification of Law Number 23 of 2003 concerning Child Protection. The discussion on Human Rights has a fairly broad scope, this is the reason for the birth of various legal instruments that provide protection regarding child protection from all aspects. The Convention on the Rights of the Child which has been ratified by Presidential Decree Number 36 of 1990 concerning the Ratification of the

Convention on the Rights of the Child (Convention on the Rights of the Child) is one example of a form of legal instrument for child protection provided by the Indonesian Government.

KPAI's duties include:

- 1) Provide reports, suggestions, input and considerations to the President regarding child protection.
- 2) Conducting outreach or outreach regarding laws and regulations related to child protection, collecting data and information, monitoring, reviewing, evaluating and supervising the implementation of protection, and receiving complaints from the public regarding human rights violations against children (Arliman S, Laurensius, 2021).

2. Human Rights Court

A Human Rights Court is a special court established to address gross human rights violations, including genocide and crimes against humanity (Law of the Republic of Indonesia Number 26 of 2000 concerning the Human Rights Court). The Human Rights Court has the authority and duty to examine and rule on cases involving gross human rights violations. The Human Rights Court also has the authority to examine and rule on cases categorized as gross human rights violations committed by Indonesian citizens (WNI) and committed outside the territorial boundaries of the Republic of Indonesia.

Regarding the authority to adjudicate gross human rights violations that occurred before the enactment of Law Number 26 of 2000 concerning Human Rights Courts, the Ad Hoc Human Rights Court is also known. Therefore, the statute of limitations is not recognized for gross human rights violations. In other words, the application of the retroactive

principle, that is, the principle that applies retroactively to gross human rights violations, is a manifestation of the existence of the Ad Hoc Human Rights Court.

3. National Commission on Anti-Violence Against Women.

The legal basis for the establishment of the National Commission on Violence Against Women is Presidential Regulation No. 65 of 2005 which is an update of Presidential Decree No. 181 of 1998. The establishment of this Commission aims to respond to the occurrence of various types of violence and human rights violations that are often experienced by women, even though currently in Law No. 39 of 1999 concerning Human Rights, there are women's rights that have seen equality between the rights of men and the rights of women", The purpose of establishing this Commission is as an effort to improve the prevention and handling of all forms of violations and violence committed against women in Indonesia as well as an effort to advance a situation that is conducive to the elimination of all forms of violence against women and the enforcement of women's human rights in Indonesia (Sulubara, Seri Mughni, 2024).

4. National Commission on Human Rights (Komnas HAM)

The basis for the establishment of the National Human Rights Commission is Presidential Decree Number 50 of 1993, followed by the enactment of Law Number 39 of 1999 concerning Human Rights, which further strengthens it. The mandate of the National Human Rights Commission, as stipulated in Article 73 of Law Number 39 of 1999 concerning Human Rights, aims to improve the

protection and enforcement of human rights for the development of the Indonesian person as a whole and their ability to participate in various areas of life, as well as to develop a situation conducive to the implementation of the enforcement of human rights, both contained in the Declaration of the Universal Declaration of Human Rights and in national legal instruments.

5. Witness and Victim Protection Agency (LPSK).

The rights that must be protected and guaranteed by LPSK include the right to obtain protection for personal, family, and property security, and freedom from threats related to testimony that will be, is, or has been given the right to receive an interpreter, the right to provide information without pressure, the right to participate in the process of choosing and determining the form of protection and security support, the right to receive information regarding court decisions (Reynaldi, Walton, Baskoro, Ammar Aziz, 2023); the right to be free from ensnaring questions, the right to obtain a new residence; the right to receive information regarding case developments; the right to obtain a new identity; the right to know if the convict is released; the right to receive assistance with living expenses; the right to receive reimbursement of transportation costs based on needs; and/or, the right to obtain legal advice.

This legal institution or institution according to Article 1 paragraph (3) of Law Number 13 of 2006 is an institution or agency that has the duty and authority to provide protection for witnesses and/or victims and provide other rights. In addition, the establishment of several

institutional instruments in the framework of enforcing human rights in Indonesia, such as the National Human Rights Commission, the National Commission on Violence Against Women and a number of other human rights organizations, is also an effort that has been made by the government in the framework of enforcing and protecting human rights.

In relation to the enforcement of human rights in Indonesia, the legal instruments in the form of Pancasila and the 1945 Constitution must be used as the main source and reference, because in an integrated manner there are basic values contained in the Indonesian Bill of Human Rights. In a legal concept, the Indonesian government has issued several regulations or policies related to the enforcement of human rights in Indonesia that are quite positive (Wahyuni, Rizki, Desiandri, Yati Sharfina, 2024). The positive efforts that have been implemented by the Indonesian government in terms of human rights enforcement, especially related to efforts to improve legal instruments and legal institutions to promote human rights. The formation and ratification of the Law on Human Rights and the Law on Child Protection, is one of the policies that is felt to be able to provide positive progress on the issue of enforcement and protection of human rights in Indonesia (Rustamana, Agus, 2025).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Essentially, Indonesia is one of the many countries in the world that upholds freedom of expression and justice. Human rights legal provisions or regulations, or in other words,

human rights legal instruments, are the tools or instruments used to uphold and guarantee human rights protection, in this case in the form of legal regulations or statutory regulations. Some examples of legal instruments for upholding human rights in Indonesia include:

1. Pancasila;
2. MPR Decree No. XVII/MPR/1998 concerning Human Rights
3. The 1945 Constitution
4. Law

➤ Law Number 39 of 1999 concerning Human Rights;

➤ Law Number 26 of 2000 concerning Human Rights Courts;

➤ Law Number 23 of 2002 concerning Child Protection;

➤ Law Number 23 of 2004 concerning the Elimination of Domestic Violence;

➤ Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination; In addition to the existing instruments

Law in enforcing human rights in Indonesia also requires human rights enforcement institutions in Indonesia to handle and manage human rights issues such as the National Commission on Human Rights, the Human Rights Court Commission, the National Commission on Anti-Violence against Women, and others in relation to which it is hoped that cases of human rights violations that occur in Indonesia will decrease and the development of human rights in Indonesia can be realized in a better direction.

B. Suggestion

For the advancement of legal science and the strengthening of human rights enforcement mechanisms in Indonesia, strategic steps are needed in the form of reconstruction of the national legal system that includes the restructuring of law enforcement institutions to have a significant impact on the protection of

citizens' rights. In addition, the development of legal science must continue to encourage harmonization between international instruments such as the UDHR, ICCPR, and ICESCR with national instruments such as Pancasila and the 1945 Constitution to ensure the full protection of civil, political, economic, social, and cultural rights. The government and academics need to strengthen the role and authority of specialized institutions such as the National Commission on Human Rights (Komnas HAM), the Indonesian Child Protection Commission (KPAI), the National Commission on Violence Against Women (Komnas Perempuan), and the Witness and Victim Protection Agency (LPSK) in efforts to prevent and address increasingly complex human rights violations. Finally, the effectiveness of the Human Rights Court in examining and deciding cases of gross human rights violations, including the application of the principle of retroactivity through the Ad Hoc Human Rights Court, must continue to be optimized to ensure legal justice and eliminate impunity in Indonesia.

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