

## Review of Human Rights Theory in Philosophical and Legal Perspectives

Hendra Busriani<sup>1</sup> Asti Nurul Puspita<sup>2</sup>

<sup>1</sup>Nusantara Muslim University

<sup>2</sup>State Islamic University of North Sumatra

E-mail: [busrianhendra@gmail.com](mailto:busrianhendra@gmail.com) [uulaza1206@gmail.com](mailto:uulaza1206@gmail.com)

Info Articles	Abstract
<p><b>Article History</b> Received: 2024-07-02 Revised: 2024-07-12 Published: 2024-07-31</p> <p><b>Keywords:</b> <i>Human Rights; 1945 Law; Restrictions on Human Rights; Public Interest; Basic Rights.</i></p>	<p>Human Rights (HAM) are rights that every person possesses from birth, granted by God Almighty. They are fundamental rights that belong to every individual and should not be interfered with. However, in practice, human rights cannot be fully implemented because they must consider the public interest, the rights of others, and public order. This article examines the meaning of human rights from an etymological perspective, expert views, and legal provisions at the national and international levels. Furthermore, this article discusses the limitations of human rights, which refer to the principles of legality, proportionality, and the public interest. These concepts are drawn from the thoughts of figures such as Hobbes, Locke, Rousseau, and also the theory of utilitarianism. Therefore, restrictions on human rights are considered legitimate if the goal is to protect the rights of others and maintain balance in national and state life.</p>

### I. INTRODUCTION

Human Rights (HAM) are fundamental rights that every individual possesses from birth, a gift from God Almighty. Human rights are inherent, apply to everyone, and cannot be taken away by anyone. Over time, recognition of human rights has become not only an ethical issue but has also been legally recognized, both in international documents such as the 1948 Universal Declaration of Human Rights (UDHR) and in national laws, including the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights.

Although human rights are universally applicable, their application in practice cannot be completely arbitrary. Human interactions in society require a balance between individual freedoms and the rights of others and collective interests. Therefore, restrictions on human rights are considered reasonable as long as they comply with regulations, are proportional, and aim to protect the common good.

In the Indonesian context, this is reflected in Article 28J of the 1945 Constitution, which states that every individual must comply with the limitations established by law to respect the rights and freedoms of others, as well as to maintain order, security, morality, and religious values.

Therefore, understanding the concept and limitations of human rights is not only important from a theoretical perspective but also has practical implications for building a just social and legal system.

### II. RESEARCH METHODS

This research employs a normative legal research method (juridical normative), a study that examines law based on norms contained in regulations, doctrines, and expert opinions. The approaches used include a statutory approach and a conceptual approach, emphasizing the study of Human Rights (HAM) and their limitations within the context of national law.

The data sources used are secondary data, which include primary legal materials such as the 1945 Constitution and the Universal Declaration of Human Rights, as well as secondary legal materials such as books, scientific journals, and the opinions of experts such as Thomas Hobbes, John Locke, Jean Jacques Rousseau, Jeremy Bentham, Meuwissen, Leah Levin, and Szabo.

Data collection can be conducted through library research, which involves collecting and analyzing various literature related to human rights and their limitations. Data analysis is conducted qualitatively, by explaining, interpreting, and connecting various existing legal

materials to reach systematic conclusions regarding the limitations of human rights.

### III. RESULTS AND DISCUSSION

#### A. Research result

This research shows that Human Rights (HAM) are fundamental rights that every individual possesses from birth as a gift from God Almighty. These rights are universal, natural, and inalienable. This aligns with the Universal Declaration of Human Rights, which affirms that everyone has basic rights, such as the right to life, liberty, justice, and security.

Research findings also indicate that human rights are not absolute, but can be subject to limitations that can only be applied to protect the rights and freedoms of others, maintain public order, morals, security, and national interests, in accordance with the provisions of the 1945 Constitution, especially Article 28J.

Furthermore, the philosophical basis for human rights restrictions stems from the thoughts of experts. Thomas Hobbes stated that without state regulation, chaos would ensue. John Locke emphasized that the state has a responsibility to protect basic human rights. Jean-Jacques Rousseau highlighted the importance of the general will in limiting freedom. On the other hand, Jerome Bentham, in his utilitarian view, stated that restrictions can be justified if they provide the greatest benefit to society. This study also states that human rights restrictions should follow the principles of legality, proportionality, and public interest, and should not be applied to non-derogable rights. In other words, human rights are understood as rights inherent to every individual, but in their implementation, there must be legally determined limits to maintain a balance between personal freedom and the public interest.

#### B. Discussion

##### 1. Understanding Human Rights

The word HAM comes from the French phrase *droits de l'homme*, meaning human rights.

In English, this term is known as human rights, while in Dutch it is called *mensenrechten*. In Indonesia, the term commonly used is human rights, which is a translation of basic rights in English and *grondrechten* in Dutch.

Some people also call it fundamental rights, which is a translation of "fundamental rights" in English and "*fundamentele rechten*" in Dutch. In the United States, in addition to the term "human rights," the term "civil rights" is also used. (Kusmariyanto, 2021: 226).

Etymologically, the term human rights consists of three components: rights, basic, and human. The first two words, rights and basic, come from Arabic, while the word human comes from Indonesian. The word rights is rooted in the word *haqqa*, which means true, real, certain, and obligatory. For example, if someone says *yahiqqa alaika an taf ala kadza*, it means you are obligated to do it. Thus, rights refer to the authority or responsibility to do or not do something. The word basic is rooted in the word *assa*, which means to build, establish, or lay a foundation. This word can also be interpreted as the origin, basis, or starting point of something. Therefore, basic refers to the basic and fundamental things that are always part of something. (Ibrahim, 2017:1).

In the Universal Declaration of Human Rights, human rights are defined as fundamental rights that are natural, universal, and eternal, granted by God Almighty (Universal Declaration of Human Rights, 2021: 5). These rights include the right to life and family, the right to development, the right to justice, the right to liberty, the right to communication, the right to security, and the right to welfare. These rights may not be ignored or taken away by anyone. Furthermore, humans also have rights and responsibilities that arise from their interactions in society.

Meuwissen states that fundamental rights and human rights (HAM) are different. Human rights have a very broad meaning, both in the context of their application and their internationally recognized meaning. Human

rights refer to rights recognized internationally. In contrast, fundamental rights are closely related to the state, namely rights recognized through national (domestic) law. (Meuwissen, 2022: 47). The meaning of human rights is related to ideal and political principles, as they are not yet part of positive law. Meanwhile, fundamental rights are clearly part of positive law (*ius constitutum*), even part of the Constitution. Human rights reflect a dynamic nature, while fundamental rights are more static.

Leah Levin also explains the difference between fundamental rights and human rights. According to Levin, the concept of human rights has two basic meanings. First, rights that cannot be taken away because a person is human. Second, rights recognized by law, created through the legal process, both nationally and internationally. (Levin, 2023: 12). The basis of these rights is societal consent, namely the agreement of citizens who recognize these rights, not just the natural principles that constitute the first meaning. (Levin, 1981: 3).

The distinction between human rights and fundamental rights, as explained by Schelten, Muwissen, and Levin, is essentially theoretical. Currently, in international democratized legislation, human rights and fundamental rights are no longer distinguished. The two have been combined and become one human right. Szabo states that the purpose of human rights is to protect human rights through institutions, especially in the face of abuse of power by state officials (Szabo, 2025: 21).

On the other hand, human rights also encourage the multidimensional development of the human person. It is also clear that the concept of human rights is not static, but rather dynamic. In practice, there is likely to be considerable debate regarding whether certain interests can properly be considered rights. In this regard, the process of debate or discussion used to determine which interests are worthy of protection and which are not is crucial, as rights have a

fundamentally different quality from other legal regulations.

The Indonesian people recognize and acknowledge that every person is part of society, and that society, in turn, consists of individuals who have human rights and live in an environment that provides resources for their lives. Therefore, in addition to having human rights, every person also has the obligation and responsibility to respect the human rights of others, uphold social order, and maintain, improve, and enhance the quality of the environment.

## 2. Restrictions on Human Rights

The rights and freedoms stipulated in this law may only be limited if there is a law to do so. Such restrictions may only be implemented to ensure respect for the human rights and fundamental freedoms of others, as well as to maintain morality, public order, and the interests of the nation. (SIREGAR, 2021: 72).

There is no provision in this law that permits the government, party, group or any other party to reduce, damage or revoke any human rights or freedoms regulated in this law.

These basic human rights and freedoms are fundamental, but they can be limited in certain situations. These restrictions must be implemented through law and cannot be arbitrary. Restrictions may only be applied to aspects related to maintaining national unity and the harmony of social life. Restrictions on human rights cannot be applied to rights that cannot be derogated from, such as those considered non-derogable (Hidayat, 2023: 54).

Furthermore, it is emphasized that all parties, including government officials, party officials, community groups, or anyone else, may not benefit from or incur losses experienced by others in understanding and implementing human rights laws. Although human rights are natural, in the real world, they cannot be implemented without limits. Everyone lives in a society consisting of many people with the same rights and freedoms.

Therefore, in their implementation, human rights must be limited to prevent conflicts and to maintain public order.

Philosophically, the principle of human rights limitations can be found in Article 29 paragraph (2) of the Universal Declaration of Human Rights (UDHR) 1948. This article states that in exercising their rights and freedoms, everyone may only be limited by law, with the aim of ensuring recognition and respect for the rights of others, as well as fulfilling the demands of morality, public order, and the common welfare (UDHR, 2021: 9).

In the legal context in Indonesia, a similar principle is explained in Article 28j of the 1945 Constitution. This message states that every person is obliged to submit to restrictions established by law, only to ensure recognition and respect for the rights and freedoms of others, and to fulfill the demands of justice based on moral considerations, religious values, security, and public order in a democratic society.

According to Mahfud MD, limitations on human rights are a natural part of social life. Without them, one person's freedom will clash with the freedom of others, creating chaos (Mahfud MD, 2025: 27). Therefore, the government is responsible for creating regulations that maintain a balance between individual freedom and the common good. However, limitations on human rights should not be imposed arbitrarily. There are three important principles to consider:

- Legality, namely that restrictions may only be carried out based on law.
- Proportionality, namely that the limits must be balanced with the goals to be achieved.
- Public interest, namely that the limitation must aim to protect the rights of others, morality, public order, or national security.

A concrete example of human rights restrictions can be seen in the right to express opinions. Everyone has the right to freely express

their opinions, but this freedom must not violate the rights of others through slander or hate speech. Similarly, the right to movement can be restricted in emergency situations, such as the implementation of social restrictions during the Covid-19 pandemic, to protect the broader public's right to life. (Supriyanto, 2018:237).

### **3. Philosophical and Practical Basis for Human Rights Restrictions**

The limitation of human rights has a strong foundation. The ideas of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau explain that humans give some of their freedom to the state to maintain order. Hobbes argued that without rules, humans would live in a state of "war of all against all." (Hobbes, 2021: 117).

Locke argued that the primary purpose of the state is to protect basic human rights, although the state can regulate freedom as long as it does not eliminate those rights. Rousseau reminded us that the general will is the basis for limiting individual freedom. Furthermore, the utilitarian theory proposed by Jeremy Bentham also states that restrictions on freedom are acceptable as long as they aim to provide the greatest benefit for the greatest number of people (Bentham, 2024:54).

Thus, human rights restrictions are legitimate if they serve the public interest, not just the interests of a small minority. Practically, human rights restrictions also provide solutions to social and political situations. Society cannot function without rules. For example, quarantine policies and restrictions on community activities during a pandemic. While these policies may restrict individual freedom, their purpose is to protect the rights of many. This demonstrates that human rights restrictions also have an aspect oriented towards protecting the common good (Pratama, 2025: 88).

## **IV. CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

Human Rights (HAM) are basic rights that are inherent in every person from birth, as a gift

from God Almighty. Human rights are natural, apply to everyone, are eternal, and cannot be taken away by anyone. However, in social life, human rights cannot be applied without limits

Because humans live with others who also have the same rights, restrictions on human rights are natural to maintain a balance between individual freedom and the common good, order, moral values, and respect for the rights of others. Human rights restrictions may only be implemented based on legal regulations, taking into account the principles of legality, proportionality, and the public interest.

From a philosophical perspective, figures such as Hobbes, Locke, Rousseau, and Bentham emphasized the crucial role of the state in regulating individual freedoms to maintain social order and protect the interests of society at large. Practically, restricting human rights has proven crucial in certain situations, such as during a pandemic, where individual freedoms are restricted to protect the rights of many.

Thus, recognition of human rights must be accompanied by an awareness of obligations and responsibilities. The state, society, and every individual have a role to play in respecting, protecting, and upholding human rights, thereby creating a just, orderly, and harmonious life in accordance with the principles of humanity and democracy.

## B. Suggestion

Restrictions on human rights should be based on clear legal grounds, be balanced, and serve the common good. The government and society must consistently balance personal freedoms with the rights of others to prevent human rights violations. Furthermore, human rights education must be increased to ensure a

balanced understanding of their rights and responsibilities.

## REFERENCE LISTAN

- Bentham, J. (2024). Pembatasan kebebasan dalam persepektif utilitarianisme. *Jurnal Filsafat Hukum*, 12(2), 50-60. Jakarta: Kencana.
- Universal Declaration of Human Rights. (2021). Prinsip pembatasan hak asasi manusia. *Jurnal HAM Internasional*, 8(1), 1-10. Jakarta: Komnas HAM.
- Meuwissen. (2022). Perbedaan hak dasar dan hak asasi manusia dalam persepektif hukum. *Jurnal Filsafat Hukum*, 11(1), 40-55. Jakarta: Prenadamedia.
- Szabo. (2023). Perlindungan hak asasi manusia melalui institusi Negara. *Jurnal HAM dan Demokrasi*, 9(1), 15-25. Jakarta : Komnas HAM.
- Hidayat R. (2023) Hak asasi manusia dalam persepektif hukum modern. *Jurnal Hukum dan HAM*, 10(1), 45-60. Bandung: Refika Aditama .
- Mahfud MD. (2025). Pembatasan hak asasi manusia dalam sistem hukum Indonesia. *Jurnal Konsitusi*, 15(1), 20-25. Jakarta: Rajawali Pers.
- Supriyanto, A. (2020). Hak asasi Manusia dan Pembantasannya dalam Hukum Indonesia. Jakarta: Kencana.
- Thomas Hobbes, T. (2021). Konsep Negara dan pembatasan kebebasan individu. *Jurnal Filsafat Politik*, 8(2), 110-120. Jakarta: Gramedia.