



# Protection Of Human Rights In The Context Of Indonesian Constitutional Law Against The Functions Of State Institutions

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**Abstract:** In light of the Indonesian Constitution, this paper examines the function of the National Human Rights Commission of Indonesia (Komnas HAM). As an impartial organization that looks into, keeps an eye on, and mediates human rights abuses, the Komnas HAM plays a crucial role. However, the Komnas HAM's existence is beset by a number of challenges, such as a lack of political and financial backing, overlapping powers with other state bodies, and restricted enforcement power. The relationship between the Indonesian Court of Human Rights and Komnas HAM is another significant matter. For significant human rights abuses to be successfully prosecuted, these two agencies ought to cooperate. In order to boost human rights protection in Indonesia, this study highlights the necessity of better interagency collaboration, strengthened legal frameworks, and increased political commitment. Thus, this study improves Indonesia's human rights protection and contributes significantly to our understanding of the Komnas HAM's position within the framework of the Indonesian Constitution.

**Keywords:** Komnas HAM, Human Rights Court, Human Rights Protection

## Introduction

Human rights are fundamental rights that are inalienable to all people and that the government must uphold, defend, and fulfill in conformity with the tenets of the relevant constitutional law. Human rights are a gift from God Almighty for every human being from the womb and throughout life (Seri Mughni Sulubara, T. Saiful Basri, 2024). It is inherent in every human being so that the human being can live in peace, tranquility and prosperity. To defend their dignity as human beings, the state, the law, even the government, and every individual must respect and uphold this set of rights.

Every individual should have the opportunity to grow according to their abilities and values, which are the basis of all human rights (Farhera et al., 2024). In the context of the Indonesian Constitution, human rights protection has a strong foundation in Indonesia's history, especially after reforms that facilitated fundamental changes in the constitutional system in 1998. The Republic of Indonesia's 1945 Constitution was amended to expressly include human rights clauses, creating a new constitution that strongly

emphasizes upholding human rights. This affirmation mandates that the state, through state institutions, is obliged to protect and guarantee the fundamental rights of citizens. These human rights are considered universal, apply anywhere and to anyone, and cannot be taken away by anyone.

The protection of human rights cannot be separated from the role of law as the main instrument in regulating, protecting and upholding the basic rights of individuals. In Law, several terms are often used with the same meaning (Prasetyo, 2025). Conversely, it is possible that the same term is used for different meanings. This is also the case with the term constitution. In addition to the constitution, other terms are known, namely the Basic Law and basic law (Budiman N.P.D Sinaga, 2005). That in Constitutional Law includes various issues regarding the relationship between state institutions and between the state and its citizens, how the state is arranged, organized, to be managed in achieving state goals.

In the context of a state of law like Indonesia, the law serves as a normative foundation that ensures that every citizen's rights are guaranteed, respected and protected. With the existence of law, crime rates will be reduced. Power holders cannot act arbitrarily because they are limited by law (Tarigan, 2024). The rights and responsibilities of every citizen are protected in large part by the law. Thus, the appropriate legislation is required. The Constitution is important in the context of human rights protection since it is the main pillar upon which human rights protection is based. The Constitution states that the state is required to protect human rights as fundamental freedoms (Syafriyani et al., 2024).

One of the constitutional issues in Indonesia is the human rights issue, which is supposed to be resolved by the National Human Rights Commission, an institution or commission that is regarded as a constitutional authority. The idea of the emergence of a state commission began when in this case the state was above the people and then in its development the state wanted the community to also be involved in overseeing the state, this was realized in this commission mechanism (Rika Widianita, 2023). By virtue of Presidential Decree No. 50 of 1993 creating the National Commission on Human Rights, Komnas HAM has been in existence since 1993. Then, in 1999, Law No. 39 of 1999 respecting Human Rights reregulated Komnas HAM's existence. The 25 members of Komnas HAM who were first appointed under Presidential Decree No. 455/M/1993, despite limited resources, successfully implemented three main pillars, namely:

1. Raising awareness of human rights in Indonesia and around the world on a national and international level.
2. Evaluation of international human rights treaties to offer suggestions for accession and ratification.
3. Keeping an eye on, looking into, and assessing Indonesia's human rights implementation and offering the government strategic recommendations.

At the beginning of the establishment of Komnas HAM, there were some pessimistic opinions that the commission would not be effective, as its mandate was considered quite weak. Indonesia at that time also still had an authoritarian status, and at that time the number of human rights violations in Indonesia was very massive. However, at the beginning of its establishment, Komnas HAM had an excellent track record as evidenced by its first investigation into the Marsinah case in 1993 (Simanjuntak, 2022). After the incident,

10 employees who worked in the same place as Marsinah were also criminalized and forced to confess to Marsinah's death, but thanks to Komnas HAM's hard work in investigating the case, the 10 employees were finally freed.

In the Indonesian government system, Komnas HAM has a unique position, as an independent institution that does not replace the institutions that run the judicial system in Indonesia, but rather complements the judicial institutions (Magelang, 2021). In addition to Komnas HAM, human rights protection in Indonesia is supported by a number of state institutions that have a strategic role in ensuring that citizens' rights are effectively fulfilled, for example, the Witness and Victim Protection Agency (LPSK), a state institution whose role is to protect witnesses and victims in the judicial process. There is also the Indonesian Child Protection Commission (KPAI), a state institution whose role is to protect children's rights and oversee the implementation of child protection policies in Indonesia.

Law No. 39/1999 on Human Rights states that Komnas HAM's primary responsibility is to oversee, look into, and mediate Indonesia's human rights implementation. This institution acts as an independent watchdog and reporter on violations of basic human rights, including advocating for major cases such as gross human rights violations. Komnas HAM is also active in providing policy recommendations to the government and organizing education and counseling to raise public awareness about the importance of human rights.

Because state institutions supervise one another and defend citizens' fundamental rights, constitutional law not only creates the framework for governance but also procedures for the preservation of human rights. The Constitution is closely related to restrictions on power. The history associated with the French Revolution is inseparable from the thoughts of Rousseau who in his work *Du Contract Social*, provided an idea that between the rights of citizens and the government there needs to be a limitation (Yasser & Desiandri, 2024).

According to the 1945 Constitution of the Republic of Indonesia (UUD 1945), one of the primary tenets of Indonesian constitutional law is the preservation of human rights, which the state is required to uphold. According to Article 1 paragraph (3) of the 1945 Constitution, which declares that: Indonesia upholds the idea of a state of law, or *Rechtsstaat*.

“The State of Indonesia is a state of law”

All facets of state life, including government, must be founded on the rule of law rather than just authority (Rais, 2022). This principle emphasizes that: Law is the main basis for state administration, every government action must have a clear legal basis, no individual or institution is immune to the law. Through policy formulation, supervision, law enforcement, and special protection for victims, these institutions strive to realize respect for human rights in accordance with the mandate of the 1945 Constitution and various other legal instruments.

Given the severity of Komnas HAM's responsibilities, the organization's attempts to guarantee the preservation of human rights in Indonesia are not without challenges. The obstacles that confront Komnas HAM can come from cultural factors, political constraints and obstacles originating from our own law enforcement apparatus, the many weaknesses of various laws and regulations relating to human rights, as well as the attitude of our

judicial institutions that are not yet pro-universal human rights. In addition, long bureaucracy and legal uncertainty also slow down the process of resolving violations, so that many cases are ultimately not completed. Another obstacle is the lack of awareness and understanding of human rights principles among government and law enforcement officials, which sometimes leads to human rights violations by the officials themselves.

Further constraints are the limited resources, both in terms of budget and experts, experienced by independent institutions such as Komnas HAM and LPSK, making human rights protection and advocacy efforts not yet optimal, resistance from certain groups to human rights issues, especially those related to religious freedom, minority group rights, and agrarian conflicts, creating social challenges that complicate human rights protection efforts in the field. Finally, weak policy implementation and lack of political commitment are the biggest obstacles, where existing policies are often not followed by concrete actions to protect and promote human rights in Indonesia.

With these obstacles, although legal human rights protection mechanisms already exist, their effectiveness still requires improvement, both in terms of inter-agency coordination, political commitment, and collective awareness to guarantee the fundamental rights of every citizen in a real and equitable manner.

Article 1 Paragraph 3 of the 1945 Constitution explicitly states that Indonesia is a state of law. One of the essential components of the concept of a state of law is the guarantee of protection for human rights (Syofyan et al., 2022). The last legal expressions of human rights provisions are Law No. 39/1999 on Human Rights (Human Rights Law) and Law No. 26/2000 on Human Rights Courts (Human Rights Court Law). Human rights violations in Indonesia persist and have not decreased even after the Human Rights Law (Law No. 39/1999) went into force. Many cases such as enforced disappearances, attacks on activists, and discrimination against vulnerable groups continue to occur without satisfactory resolution. Lack of law enforcement, corruption, and lack of transparency in the judicial process are the main factors that complicate the resolution of these cases. This has led to disappointment and doubts about the state's ability to protect the human rights of its citizens.

Nowadays, there are many cases of human rights violations that often occur. But of the many cases, it can be said that not many can be thoroughly resolved by the authorized institutions (Rizki et al., 2022). In fact, the issue of resolving human rights violations in Indonesia has always been a polemic that has no end and then fades over time. One of the cases that was not resolved thoroughly in the Human Rights Court was the case of the shooting of Trisakti students, better known as the Semanggi Tragedy. With the creation of Law Number 26 of 2000 concerning the Human Rights Court, Indonesia already possesses a number of human rights-related legal tools, particularly the ability to punish egregious human rights crimes. The Human Rights Court is a unique court under this statute that deals with cases involving egregious human rights abuses such as enforced disappearances, mass murders, attacks on particular groups, and sexual assault. After an investigation by Komnas HAM or another organization, the file is sent to the Attorney General, who subsequently holds a hearing and renders a decision (Pratama, 2022).

To resolve cases alleging violations of human rights, the Human Rights Court works with a number of agencies, such as the Attorney General's Office and the National Human Rights Commission. One important player in this is Komnas HAM, the National Commission for Human Rights. The responsibilities assigned to Komnas HAM include gathering information and evidence, doing an initial inquiry into claims of grave human rights abuses, and assessing whether the case qualifies as a major human rights violation. Komnas HAM then forwards the investigation's results to the Attorney General so that the legal process can start. Komnas HAM also acts as a witness or expert in the court process, and provides recommendations to improve human rights protection in Indonesia. The Attorney General's Office reviews and processes the case file to determine whether there are sufficient grounds to proceed to trial. If there are sufficient grounds, the AGO submits the case to the Human Rights Court and prosecutes the perpetrators of human rights violations. As stated in Law No. 26/2000 on Human Rights Courts and the Criminal Code, the AGO is also responsible for gathering more evidence, drafting indictments, and conducting the prosecution process in compliance with relevant laws and regulations (KUHP) (Rizqy et al., 2025).

The only four (four) Human Rights Courts currently functioning within the broad judicial jurisdiction are the Central Jakarta District Court, Surabaya District Court, Medan District Court, and Makassar District Court. They are only able to investigate and render decisions in cases involving flagrant abuses of human rights, though. The Human Rights Court's jurisdiction is separated into multiple categories, including

1. Scope of Absolute Authority

The Human Rights Court has complete jurisdiction to consider cases involving grave violations of human rights, including enforced disappearances, mass killings, attacks on specific groups, sexual violence, and political repression, according to Articles 4 and 5 of Law Number 26 of 2000 (Fredy Gandhi Midia, 2021). This authority covers cases that occur in the territory of Indonesia, committed by Indonesian citizens abroad, as well as cases that occurred before or after the enactment of this law. The Human Rights Court can handle instances involving flagrant violations of human rights because of its relative authority and competence, such as enforced disappearances, mass killings, attacks on specific groups, sexual violence, and political oppression, according to Article 3 paragraph (1) of Law No. 26/2000. This scope of authority includes cases that occur in the territory of Indonesia, as well as cases committed by Indonesian citizens abroad. Additionally, instances that took place before to or during the passage of this statute may be heard by the Human Rights Court. The Human Rights Court must consider the values of justice, equality, and human rights protection as it exercises its jurisdiction. At the stage of law enforcement in the Human Rights Court, it must go through several legal stages like in general court, starting from investigation, investigation to the execution stage and legal remedies if any, which include:

According to Article 3 paragraph (1) of Law No. 26/2000, the Human Rights Court has a relative scope of jurisdiction or competence to consider cases of grave human rights abuses, including enforced disappearances, mass killings, attacks on certain groups, sexual violence, and political oppression. Cases that take place on Indonesian soil as well

as those perpetrated by Indonesian nationals overseas fall under this area of jurisdiction. Additionally, instances that took place before to or during the passage of this statute may be heard by the Human Rights Court. The Human Rights Court must consider the values of justice, equality, and human rights protection as it exercises its jurisdiction. Similar to a normal court, law enforcement in the Human Rights Court must proceed through a number of legal phases, beginning with investigation and continuing through execution and any applicable legal remedies. These stages include:

a) Investigation

An investigation is the process of gathering preliminary information and evidence to determine whether a gross human rights violation has occurred (Putri Maha Dewi, 2022). In accordance with Article 18 of Law No. 26/2000 on Human Rights Courts, the National Commission on Human Rights (Komnas HAM) is conducting the investigation. The goal of the investigation is to compile early data and proof of purported infractions. The Attorney General is then notified of the investigation's findings so that the investigation can continue. Additionally, if Komnas HAM discovers claims of serious human rights abuses, it has the authority to carry out *ex officio* inquiries and investigations at the request of victims or their families. Law No. 39/1999 on Human Rights provides Komnas HAM with further legal justification for its investigative powers.

b) Arrest

When investigators suspect someone of committing serious human rights breaches, they may arrest them and place them in jail or another location (Mulkan & Wulandari, 2022). This arrest is required by the Criminal Code (KUHP), Law No. 26/2000 on Human Rights Courts, and the International Convention on Civil and Political Rights.

Arrests can only be made if there is sufficient evidence of gross human rights violations and there is a concern that the perpetrator will flee or destroy evidence. Arrests must be made by an authorized official such as the Police, Prosecutor's Office or Judge, and must be accompanied by an arrest warrant. In addition, arrests must be carried out in a manner that does not prejudice human rights.

c) Detention

Detention is the act of an investigator or judge to put and keep a person in prison or a certain other place during the investigation or judicial process (Eka et al., 2024). The reason for this imprisonment is the suspicion that the defendant would evade capture, obliterate evidence, or commit the crime again. The International Convention on Civil and Political Rights, as well as Law No. 26/2000 on Human Rights Courts and the Criminal Code (KUHP), must be followed when conducting detention. takes into consideration the relevant legal processes.

Only when there is ample proof of egregious human rights abuses and specific requirements are satisfied—such as worries that the offender will escape or destroy evidence—can detention be implemented. Detention must be carried out by an authorized official, such as the police, prosecutor or judge, and must be accompanied

by a detention warrant. In addition, detention must be carried out in a manner that does not harm human rights and takes into account applicable legal procedures

a. Prosecution

Prosecution is defined in Article 1, Paragraph 7 of the Criminal Procedure Act as the act of a prosecutor referring a criminal case to a recognized human rights court and asking a judge to hear the case and render a decision during a court hearing in accordance with the Criminal Procedure Act's guidelines (Eka et al., 2024). In the course of his public prosecutor duties, the Attorney General may designate ad hoc public prosecutors who include both government and community members in accordance with Article 23 paragraph (2).

b. Court hearings

Law No. 26/2000 and Law No. 48/2009 on Judicial Power govern the Human Rights Court's judicial structure and judge composition. Judges with experience and expertise in human rights law, both career and non-career, are chosen to serve on the Human Rights Court. Career judges are selected from the General, Religious and State Administrative Courts. They must have a minimum of 5 years experience as a judge and have attended specialized training on human rights law.

In the meanwhile, academics, attorneys, and human rights advocates with expertise in human rights law are chosen to serve as non-career judges. Five judges make up the Human Rights Court: three from the General Court, one from the Administrative Court, and one from the Religious Court. The Chief Judge is responsible for overseeing the trial and planning the proceedings; they are selected from among the career judges.

There is a deadline for the Human Rights Court to review and rule on cases involving flagrant violations of human rights:

Stages of Examination

1. Human Rights Court: 180 days after the case is submitted.
2. High Court (Appeal): 90 days after the case is submitted.
3. Supreme Court (Cassation): 90 days after the case is submitted.

Law No. 26/2000 on Human Rights Courts (Articles 31–33) specifies this deadline.

c. Compensation, restitution and rehabilitation

Based on the types and sources of data used in this study, the author employs normative qualitative research procedures. Normative qualitative research, a method carried out through literary studies, uses a variety of sources, including laws, books, journals, theses, and legislation relevant to the development of research concerns.

## Methodology

Nanang Martono formulated that research is a process to find answers to a particular problem, then using scientific methods; a collection of methods used in a systematic way will find answers to problems to produce knowledge insights. One technique for comprehending the subject of linked science is the data collection approach. Based on the types and sources of data used in this study, the author employs normative qualitative research procedures. Normative qualitative research, a method carried out through literary studies, uses a variety of sources, including laws, books, journals, theses, and legislation relevant to the development of research concerns. This strategy aims to produce a systematic understanding of the National Human Rights Commission's role and function in ensuring the protection of human rights within the parameters of Indonesian constitutional law, as well as the challenges faced and the relationship between the National Human Rights Commission and the Human Rights Court in this regard. The author used descriptive judicial data analysis, a research method that employs the collected data or samples to identify or describe the study's subject, to locate primary, secondary, and tertiary data.

## Result and Discussion

### **The function of the National Human Rights Commission in ensuring the protection of human rights in the context of Indonesian Constitutional Law**

The National Commission on Human Rights (Komnas HAM) is one independent body that is essential to ensuring the protection of human rights in Indonesia. According to Law No. 39/1999 on Human Rights, Komnas HAM's main responsibilities are to oversee, investigate, and mediate the application of human rights in Indonesia. This role aims to ensure that the state protects, defends, and carries out the fundamental rights of its citizens.

The following laws and regulations serve as the foundation for Komnas HAM's role in guaranteeing the preservation of human rights in Indonesia:

1. The 1945 Constitution of the Republic of Indonesia (UUD 1945), particularly Article 1 paragraph (3) which affirms that Indonesia is a state of law.
2. Law No. 39 Year 1999 on Human Rights.
3. Law No. 26 of 2000 on the Human Rights Court.
4. Presidential Regulation No. 50 of 1993 on the National Human Rights Commission.

National Human Rights Commission plays a crucial role in guaranteeing the defense of human rights within the framework of Indonesian constitutional law. The monitoring, investigation, mediation, and recommendation activities of Komnas HAM are designed to make sure that the state upholds, defends, and fulfills the fundamental rights of its inhabitants. Thus, Komnas HAM's presence is crucial to upholding and defending human rights in Indonesia (Pasha et al., 2024).

### **Obstacles and challenges faced by the state institution Komnas HAM in ensuring the protection of human rights in Indonesia**

There are still many barriers and limitations to Indonesia's human rights protection efforts. Human rights abuses still happen in spite of the Human Rights legal, and legal enforcement has not. Cultural, political and legal factors, as well as limited resources and



awareness of the authorities, complicate the effectiveness of human rights protection. Lengthy bureaucracy, legal uncertainty, and resistance from certain groups add to the complexity of the problem. Weak policy implementation and lack of political commitment are major obstacles. Although human rights protection mechanisms exist, improved effectiveness is still needed through inter-agency coordination, political commitment, and collective awareness.

### **The relationship between the National Human Rights Commission and the Human Rights Court in the protection of human rights in Indonesia**

In order to protect human rights in Indonesia, Komnas HAM and the Human Rights Court collaborate closely. Komnas HAM oversees and investigates human rights abuses and presents the results to the Human Rights Court. The Human Rights Court then considers the case and issues a ruling in line with the applicable laws. Through this collaboration, human rights law is developed, violations are decreased, public awareness is raised, and the efficacy of human rights protection is guaranteed.

The legal basis for this cooperation is laid down by Act No. 39/1999 on Human Rights, Article 28A-28J of the Constitution of 1945, and Act No. 26/2000 on the Court of Human Rights. However, challenges still remain, such as limited funding, lack of public knowledge, and resistance from certain groups. Therefore, initiatives are needed to raise awareness and understanding of human rights in the community.

### **Conclusion**

In Indonesia, the Constitution guarantees the protection of human rights as a fundamental right. Through its monitoring, investigation, and mediation efforts, Komnas HAM contributes significantly to the preservation of human rights. However, Komnas HAM has to contend with issues such as a lack of public awareness, political opposition, and scarce finances. In order to preserve justice and the truth, Komnas HAM and the Human Rights Court must cooperate. Both work together to monitor and respond to human rights violations, increasing the effectiveness of human rights protection.

In order for human rights protection to be more successful, it is required that:

1. Raise community awareness and comprehension of human rights.
2. enhancing the Human Rights Court's collaboration with Komnas HAM.
3. Enhancing Komnas HAM's budget and resource quality.
4. Improvement of human rights legislation.

As a result, citizens' fundamental rights may be ensured and human rights protection in Indonesia can be reinforced.

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