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Human Rights Enforcement in Indonesia towards the Implementation of Pancasila Values

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Abstract

The study aims to determine the extent of the Indonesian Government's efforts to provide protection of Human Rights (HAM) in order to remain firmly adhered to the values of Pancasila. **This research method** is normative juridical, with a statutory approach using data analysis techniques and processing the results of primary material collection and secondary material collection.

Novelty of this research provides a more comprehensive view of efforts to restore and improve human rights enforcement in post-New Order Indonesia, especially in the face of human rights violations that remain unresolved, such as the Tanjung Priok, Aceh, Semanggi, East Timor and Papua cases. This study also offers a solution based on Pancasila values as the basis for making legal policies, which have not been thoroughly applied by the government in law enforcement practices in Indonesia.

The study results show that human rights enforcement in Indonesia is still far from the true meaning of justice, because it is still influenced by the interests of the authorities, law enforcement officials, and so on. Included in the enforcement of human rights is also still very far away from the values of Pancasila.

Conclusion of this paper is that all formulations and policies of the State must be guided by the values of Pancasila, especially in the enforcement of human rights in Indonesia, although many cases that occur in law enforcement do not reflect Pancasila as the identity of the nation.

Keywords: Pancasila; Human Rights; Law Enforcement; Nation.

Abstrak

Tujuan Penelitian ini adalah untuk mengetahui sejauhmana upaya Pemerintah Indonesia dalam memberikan perlindungan Hak Asasi Manusia (HAM) agar tetap berpegang teguh terhadap nilai-nilai Pancasila.

Metode Penelitian ini adalah secara yuridis normatif, dengan pendekatan perundang-undangan menggunakan teknik analisis data dan mengolah hasil pengumpulan bahan primer serta pengumpulan bahan sekunder.

Novelty penelitian ini memberikan pandangan yang lebih komprehensif mengenai upaya pemulihan dan perbaikan penegakan HAM di Indonesia pasca-Orde Baru, terutama dalam menghadapi pelanggaran HAM yang masih belum terselesaikan, seperti kasus Tanjung Priok, Aceh, Semanggi, Timor Timur, dan Papua. Penelitian ini juga menawarkan solusi berbasis nilai-nilai Pancasila yang menjadi landasan dalam pembuatan kebijakan hukum, yang belum banyak diterapkan secara menyeluruh oleh pemerintah dalam praktek penegakan hukum di Indonesia.

Hasil Penelitian menunjukkan bahwa penegakan HAM di Indonesia masih jauh dari arti keadilan yang sebenarnya, karena masih dipengaruhi oleh kepentingan-kepentingan para penguasa, aparat penegak hukum, dan lain sebagainya. Termasuk dalam penegakan HAM juga masih sangat jauh meninggalkan nilai-nilai Pancasila.

Kesimpulan dari penulisan ini adalah semua formulasi dan kebijakan Negara harus berpedoman pada sendi nilai-nilai Pancasila, terutama dalam penegakan Hak Asasi Manusia di Indonesia, walaupun banyak kasus yang terjadi dalam penegakan hukumnya tidak mencerminkan Pancasila sebagai identitas bangsa.

Kata Kunci : Pancasila; Hak Asasi Manusia; Penegakan Hukum; Bangsa.

1. INTRODUCTION

Apart from being the basis of the State, Pancasila is also the view of life of the Indonesian people, meaning that all activities of the life of the nation and state must be in accordance with the values of Pancasila.¹ History has shown that Pancasila is part of the soul of the entire Indonesian nation which is able to provide life force to the Indonesian nation. Including guiding in the pursuit of a better physical and mental life, a just and prosperous Indonesian society. Pancasila is accepted and established as the basis of the State as in the Preamble of the 1945 Constitution which is the personality and outlook of the nation. Pancasila becomes very important in learning, because Pancasila is part of the soul of all Indonesian people. That is, in Pancasila itself contains noble soul values and is loaded with teachings about morality.

The noble values in Pancasila are an incarnation of the entire Indonesian nation which has not been practiced in everyday life in society, these noble values are ignored which by itself will be lost. By realizing that in order to preserve the values of Pancasila it is necessary to have a real and continuous effort as well as the appreciation and practice of the noble values contained therein. Every Indonesian Citizen, State Organizer, and State Institutions, and community institutions, both at the center and in the regions must be able to practice the values of Pancasila for the sake of the integrity and welfare of the nation.

In this change, the institutions of state and government began to improve. The position of the executive and legislative institutions was overhauled following the wishes of the people through amendments to the Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD NRI 1945). The emergence of new institutions, such as the Constitutional Court, the Judicial Commission and the Corruption Eradication Commission, was an attempt to change the mechanism of State administration to be more modern, transparent and accountable. Amendments to the 1945 Constitution that include the direction of state policies do not necessarily change the ideology of the nation, namely Pancasila. Pancasila is still considered as the identity of the Indonesian nation and the unifying tool of the Indonesian nation. Pancasila is the view of life, the foundation of the state, and the unifier of the pluralistic

¹ Sudarto Anang Dony Irawan, "Membangun Semangat Kebangsaan Melalui Nilai Pancasila Yang Selaras Dengan Nilai-Nilai Keagamaan," in *Sinergi Pancasila Dan Agama Dalam Penguatan Semangat Kebangsaan*, ed. Ruhani, 1st ed. (Depok: Gemala, 2022), 43–60, https://repository.um-surabaya.ac.id/6699/1/Anang_Book_Chapter_4_Full_WM.pdf.

Indonesian nation. For the Indonesian people, the values of Pancasila are placed as a paradigm of legal politics.² Therefore, Pancasila in the constitutional system cannot be separated from the 1945 Constitution. Pancasila and the 1945 Constitution can grow according to the needs of the times, but they cannot be separated from each other. The 1945 Constitution must be understood as a form of normative elaboration of the values of Pancasila, and vice versa, every normative idea of the 1945 Constitution has an accompanying spirit, namely Pancasila.

Changes in the constitutional dimension which are very structural and instrumental, have not been able to change changes in the cultural dimension and the quality of human resources. These fundamental changes are not accompanied by changes in the quality of individual human beings and cultural collectivities in accordance with the demands of the development of the situation. New ideas outlined in legislation and constitutions have not changed the character of the nation to noble and noble values. The enforcement of human rights (hereinafter abbreviated as human rights) cannot be separated from the values of Pancasila. Human rights as a moral concept in the life of society and the state is not a concept that was born instantly and is comprehensive. Human rights were born gradually and over time in the dynamics of human history.³ As a moral concept, human rights are built and developed empirically in the lives and interests of social groups in the life of a state society. The idea of fundamental human rights protection was first put forward by a number of papers around the world. These ideas are based on Western philosophy and the Western way of thinking, including those put forward by Marxism.⁴ The desire to protect individual rights is found in the Western tradition. In this tradition, human rights are specifically related to individuals who should not be violated by other individuals, by groups and even by the State or rulers.

After the reform era, a multi-dimensional movement is still ongoing in Indonesia. This includes efforts to reorganize the national legal system as a rational and systematic effort to actualize the basic values of democracy and human rights. The basic values of democracy are consistency to always be transparent in political decision-making, upholding the rule of law, promoting and protecting human rights, a free and non-discriminatory judiciary, creating adaptive formulations of legal norms, not making law a tool of political power, efficient, effective and authoritative government because it obeys the rule of law (good governance), a free press and a direct, general, free, secret, honest and fair election system.⁵

² Anang Dony Irawan and Banu Prasetyo, "Jurnal Pendidikan Sosial Keberagaman PANCASILA SEBAGAI LANDASAN POLITIK HUKUM KEBANGSAAN," *Jurnal Pendidikan Sosial Keberagaman* 9, no. 1 (2022): 1–7, <https://juridiksiam.unram.ac.id/index.php/juridiksiam>.

³ Levina Yustitianiingtyas Rio Dwinanda Sudiq, "INTERVENSI RUSIA TERHADAP UKRAINA PADA TAHUN 2022 SEBAGAI PELANGGARAN BERAT HAM," *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 3 (2022): 101–17, <https://ejournal.undiksha.ac.id/index.php/JJPP/article/view/51278>.

⁴ Levina Yustitianiingtyas, "PERTANGGUNGJAWABAN PIDANA OLEH KORPORASI DALAM TINDAKAN PELANGGARAN HAM DI INDONESIA," *Jurnal Ilmu Hukum Novelty* 7, no. 1 (2016): 25–41, [https://download.garuda.kemdikbud.go.id/article.php?article=429767&val=8353&title=Pertanggungjawaban Pidana Oleh Korporasi Dalam Tindakan Pelanggaran HAM di Indonesia](https://download.garuda.kemdikbud.go.id/article.php?article=429767&val=8353&title=Pertanggungjawaban%20Pidana%20Oleh%20Korporasi%20Dalam%20Tindakan%20Pelanggaran%20HAM%20di%20Indonesia).

⁵ Anang Dony Irawan, "PENDIDIKAN PEMILIH DALAM MENINGKATKAN PARTISIPASI POLITIK MASYARAKAT PADA PEMILIHAN UMUM SERENTAK 2019," *Replik* 7, no. 1 (2019): 55–70, <https://jurnal.umt.ac.id/index.php/replik/article/view/2448/1543>.

Efforts towards this direction must of course be supported by the resolution of cases that occurred during the New Order regime and various acts of violence that occurred after the New Order Government. The resolution of cases of human rights violations that have caused many casualties is one form of legal protection that will guarantee the existence of trials against perpetrators of human rights violations, but this does not necessarily mean that modern times cannot grow truly real norms. It may at least happen that various conceptions of human rights that were originally Western conceptions have been accepted or will be accepted by non-Western societies, what is important is the fact that although the protection of individual rights is based on the idea that it can be accepted by other societies and become a universally recognized norm. Despite discrepancies and varying interpretations of human rights principles, particularly in the context of humanitarian intervention or the principle of non-intervention, UN member states have made progress in upholding human rights.⁶

The condition of human rights enforcement and protection is increasingly concerning, especially the increasing occurrence of gross human rights violations. Several cases of human rights violations that have not yet been resolved, such as Tanjung Priok, Aceh, Semanggi I, Semanggi II, East Timor, Papua, have not yet been resolved completely. This is due to the absence of adequate legal protection to bring perpetrators of gross human rights violations to justice. Human rights violations during the New Order era were also triggered by an authoritarian political system that provided opportunities for the authorities, including law enforcers, to commit human rights violations through constitutional loopholes by making government policies that were vulnerable to human rights violations such as in Aceh and Timor. On the other hand, the occurrence of human rights violations is also caused by the people's low legal awareness and vigilantism (*eigenrichtig*). This is motivated by dissatisfaction with government policies, discriminatory treatment by the authorities in law enforcement. Therefore, in protecting human rights there are three important factors that need to be considered, namely the authorities, including law enforcement officials, must carry out their duties and authorities properly, the establishment of regulations governing human rights and public awareness.

Some of the legal instruments created by the Government to achieve the protection of human rights are the 1945 Constitution which regulates human rights, Law No. 39/1999 on Human Rights and Law No. 26/2000 on Human Rights Courts which are key in resolving human rights violations, especially gross human rights violations. Law No. 26/2000 on Human Rights Courts has very different characteristics from general criminal law in which there are several deviations from the principles of criminal law and criminal procedural law. This deviation is an effort to make the criminal law capable of trying perpetrators of human rights violations comprehensively and fairly. Comprehensive and fair here means that no perpetrators of human rights violations, both in the past and in the future, can escape justice and punishment due to

⁶ Rhona K.M. Smith et al., *Hukum Hak Asasi Manusia*, ed. Knut D. Asplund, Suparman Marzuki, and Eko Riyadi, 1st ed. (Yogyakarta: PUSHAM UII, 2008), <https://jdih.situbondokab.go.id/barang/buku/13>. *Hukum Hak Asasi Manusia* by Rhona K.M. Smith, dkk. (z-lib.org).pdf.

the weakness of the legal system in Indonesia.

Some previous studies related to the Enforcement of Human Rights (HAM) in Indonesia towards the Implementation of Pancasila Values, the author found including:

From the research of Bobi Aswandi and Kholis Roisah,⁷ Indonesia as a democratic Pancasila legal state has an obligation to protect human rights, the protection of human rights in a legal state must be enshrined in the constitution or national law. As a Pancasila state of law, human rights have been included in Pancasila itself, such as freedom of religion and belief. Meanwhile, as a Pancasila democracy, the protection of human rights is the goal as well as a prerequisite for the running of democracy. While Ario Putra,⁸ emphasizing human rights in Indonesia has experienced various forms of dynamics that are full of struggles in its enforcement, be it the rejection of human rights or the application of human rights in Indonesia. Various efforts have been made by the ancestors in the past and the current leaders, aiming for the establishment of human rights in Indonesia. Human rights in Indonesia stem from the ideology of Pancasila. Ana Fauzia and Fathul Hamdani,⁹ One of the ways to uphold human rights is through the fulfillment of basic human rights. Efforts to fulfill basic human rights in the regions have also become a concern of the central government through the Human Rights Care District/City (KKP HAM) program implemented by the Ministry of Law and Human Rights (Kemenkumham). Unfortunately, only 59 percent of the total regencies/cities in Indonesia are declared to care about human rights. The actualization of Pancasila and constitutional values can be said to be the spirit of human rights enforcement. The success or failure of human rights enforcement depends on the extent to which the values of Pancasila and the constitution are implemented in the orderly life of society, nation and state. Research that has been conducted by several previous authors above, there is no similarity with the legal writing in this article. This legal writing focuses on examining the extent of the Indonesian Government's efforts to provide protection of Human Rights (HAM) in order to continue to adhere to the values of Pancasila.

2. METHOD

This research method is normative juridical research, with a statutory approach.¹⁰ The

⁷ Bobi Aswandi and Kholis Roisah, "NEGARA HUKUM DAN DEMOKRASI PANCASILA DALAM KAITANNYA DENGAN HAK ASASI MANUSIA (HAM)," *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 128–45, <https://ejournal2.undip.ac.id/index.php/jphi/article/view/4286>.

⁸ Ario Putra, "INTERPRETASI HAM DALAM IDEOLOGI PANCASILA DAN IMPLIKASINYA TERHADAP PERSATUAN DAN KESATUAN DI INDONESIA (Interpretation of Human Rights in the Pancasila Ideology and Implications for Unity and Integrity in Indonesia)," *Jurnal HAM* 13, no. 1 (2022): 1–14, <https://ejournal.balitbangham.go.id/index.php/ham/article/download/1632/pdf>.

⁹ Ana Fauzia and Fathul Hamdani, "Aktualisasi Nilai-Nilai Pancasila Dan Konstitusi Melalui Pelokalan Kebijakan Hak Asasi Manusia (HAM) Di Daerah," *Indonesia Berdaya Is a Journal of Community Engagement* 2, no. 2 (2021): 157–66, <https://ukinstitute.org/journals/ib/article/view/2220/89>.

¹⁰ Sabita Firgoria Luisa Edon and Nur Azizah Hidayat, "KEWAJIBAN PEMERINTAH INDONESIA TERHADAP PELANGGARAN HAM YANG DILAKUKAN OLEH KELOMPOK KRIMINAL BERSENJATA (KKB) DI PAPUA," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 3 (2021): 854–69, <https://ejournal.undiksha.ac.id/index.php/JJPP/article/view/39160>.

data analysis technique by processing the results of the collection of primary materials, as well as the collection of secondary materials to be continued by analyzing the data sources obtained, laws and regulations, literature, data, and some related documents, as well as tertiary legal materials to explain and assist in analyzing primary and secondary legal materials that correspond to the theme.¹¹ When viewed from the nature of writing, the method used is to use a descriptive analytical method, which tries to describe the symptoms that arise in society and the problems that arise in Human Rights Enforcement and tries to analyze and provide a solution.

3. DISCUSSION

3.1. Concept of Human Rights and the State

The provisions contained in the Universal Declaration of Human Rights established by the United Nations in 1948 consist of fundamental human rights and fundamental freedoms. An example of a fundamental human right is the right to life, while fundamental freedoms include freedom of thought, speech and freedom from fear.' The Universal Declaration of Human Rights emphasizes that the rights contained in the declaration should be enjoyed by everyone around the world. In the 1966 treaty, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Human rights are then divided into two main categories, namely political human rights and social human rights. These two categories are further broken down into several categories of human rights. Political human rights consist of political rights, which include the right to vote and the right to be elected. Then there are civil rights, including the rights to body, life, liberty, honor and property. Meanwhile, social rights consist of economic rights, including the right to work and the right to a reasonable livelihood. Social rights, including the right to organization, the right to social security and the right to family protection, and finally cultural rights, including the right to education, the right to take part in cultural life including developing science and technology. The state has an obligation to ensure a harmonious life for its citizens who have heterogeneous cultures and the state must be able to coordinate various interests that are directly related to their rights, both rights as citizens and rights as human beings. The National Constitution has also stated in Article 28I paragraph (4) of the 1945 Constitution that the protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the Government.¹²

There are several ideas related to the need for the state to regulate the protection of human rights for its citizens. First, the idea that departs from the historical journey of the state to become a social system that must protect its citizens and must provide guarantees for the welfare of its citizens. The protection given by the state to human rights to its citizens is also

¹¹ Anang Dony Irawan Anas Santoso, "Pancasila Dan Pembangunan Nasional Di Era Revolusi Industri 4.0," in *Implementasi Nilai-Nilai Pancasila Di Era 4.0*, ed. Pria Sahuri Sri Rahayu Pudjiastuti, Ria Safitri, 1st ed. (Depok: Gemala, 2020), 21–38, https://repository.um-surabaya.ac.id/5450/1/10_Pancasila_dan_Pembangunan_Nasional_4.0.pdf.

¹² Anang Dony Irawan, Kaharudin Putra Samudra, and Aldiansah Pratama, "Perlindungan Hak Asasi Manusia Oleh Pemerintah Pada Masa Pandemi COVID-19," *Jurnal Citizenship Virtues* 1, no. 1 (2021): 1–6, <https://jurnal.stkipkusumanegara.ac.id/index.php/citizenshipvirtues/article/view/902/542>.

based on the state's obligation to regulate the relationship between humans in society. Second, there is the idea that departs from the discourse of the modern state in favor of the concepts of state, law and democracy. There is a close connection between the rule of law and democracy. The establishment of the rule of law and democracy is inherent in the implementation of human rights protection, because the protection of human rights is a very essential and substantial factor for a democratic state of law.¹³

The existence of citizens in the dynamics of a democratic state has implications for the state's obligation to protect its citizens in exercising their rights and obligations before the law and government. Therefore, the protection of human rights in the context of democracy should not only focus on the granting of civil liberties and political freedoms. However, it must cover broader areas such as the provision of freedom of people's involvement in determining the common life, the right to get equal treatment before the law (equality before the law) and the provision of socio-economic rights in a humane manner.

3.2. Human Rights Arrangements in International Law and National Law

3.2.1. Human Rights in International Law

In 1215 in England, a document known as the "Magna Charta" was published. This document contains the protection of organic minorities in society in England at that time. Then in 1628, the Bill of Rights was drafted, which was the first document to officially provide respect and protection for human rights.¹⁴ In 1776 in America, "The Virginia Declaration of Rights" was proclaimed. In 1789 in France the "Declaration des droits de l'homme et du Citoyen" was proclaimed. Both declarations were inspired by natural rights and made them: secular, rational, universal and individual, democratic and radical.

After World War II, which was marked by the rape of human rights, the United Nations immediately took steps to socialize human rights which eventually sparked The Universal Declaration of Human Rights in 1948.¹⁵ The main purpose of the UN Declaration was to provide a universal standard of human rights through a compromise of Western and Socialist concepts. Human rights as a concept that contains morals in the life of society and the state has long been fought for individually and collectively. In 1215 the nobles succeeded in forcing the King of England to issue the Magna Charta Libertanum.

The charter was issued by the King of England as a fundamental charter as a concept of human rights which contains the protection of human rights relating to the prohibition of the King to arbitrarily detain, punish and deprive objects and at the same time protect the private property rights of the British people. Thus the Magna Charta Libertanum Charter is a moral and legal principle that is expected to control the King's power in England. The Magna Charta Libertanum Charter was later made into a Human Rights law which was formed as a struggle of the people against the King's power and at the same time as a guideline in upholding human

¹³ Sri Hastuti Puspitasari, "Perlindungan HAM Dalam Masyarakat Bernegara," *Jurnal Hukum UII* 7, no. 14 (2000): 46–61, <https://journal.uui.ac.id/IUSTUM/article/download/4993/4426/8331>.

¹⁴ Sunarso, *PENDIDIKAN HAK ASASI MANUSIA*, ed. Jaka Susila, 1st ed. (Surakarta: CV. INDOTAMA SOLO, 2020), <https://staffnew.uny.ac.id/upload/131655980/lainlain/Buku Pendidikan Hak Asasi Manusia.pdf>.

¹⁵ Sunarso.

rights in the life order of the nation and state.

The principle of the order of national life according to Sri Hastuti¹⁶ and the most fundamental state includes three things, namely consisting of the people as the main component of the state, the state as an institution of power organization and a forum for the expression of society in articulating its interests and access arising from the relationship between society and the state, and this access is manifested in the human rights issues of individuals who are part of society and the state.

International human rights law emerged in 1945 as a result of the disaster caused by the Nazi denial of human rights. The experience of World War I and World War II became a "stigma" for the countries involved in the war and those that were not, and became the basic principle and main objective in the formation of the United Nations. Several instruments relating to human rights have been ratified, including the following; The Universal Declaration of Human Rights and the Genocide Convention of 1948, the Convention on the Political Rights of Women in 1952, the Standard Minimum Rules for the Treatment of Prisoners in 1957, the Convention on the Elimination of All Forms of Racial Discrimination in 1965, and the International Agreement on Economic, Social and Cultural Rights in 1966.

The UN's serious involvement in dealing with human rights issues has been demonstrated by increasing regional efforts in human rights cases. This was realized by the European Convention on Human Rights, the establishment of the Inter-American Commission on Human Rights in 1960 and the enactment of the American Convention on Human Rights in 1978. In practice, the most important and useful sources of international human rights law are international treaties that clearly and directly create international obligations for the parties. But these treaties are binding only if they are in force and apply to countries that are explicitly participants in the treaty.

The state is an organization that contains power. Thus the state is a very important element responsible for protecting human rights. The relationship between society and the state can create an obligation to respect each other's human rights. If the community and the state can implement the enforcement of human rights properly, then the access arising from the relationship between the community and the state will not lead to human rights violations that are very risky and very detrimental to society as part of the state, which is an institution of the power organization.

The protection of human rights by the state in the context of democracy has two dimensions, namely the negative dimension where the right to protect a person from harmful actions and the intervention of the government/state in aspects of civil and political rights is very important. The other dimension is the positive dimension where the state protects the civil and political rights of the people and the consequences of all this require the state to provide socio-economic rights for its citizens through regulations or judicial institutions.

Human rights issues are often used as a political tool by various groups that claim to represent the interests of the community or the state for the purposes of humanitarianism and

¹⁶ Puspitasari, "Perlindungan HAM Dalam Masyarakat Bernegara."

justice. Therefore, human rights continue to be considered a strategic tool for responding to the development of problems in society. Human rights violations often elicit a reaction from the international community. However, they are often exploited by many countries that have political, economic, or ideological interests to intervene through both national and international policy institutions.

The state in the human rights system has no rights. Therefore, the state only has the *obligation or responsibility* to fulfill the rights (owned by individuals or groups) guaranteed in human rights instruments. If a state does not show a willingness to fulfill its obligations, it can be considered to have violated human rights or international law. If the state is not responsible for its violations, this responsibility will be taken over by the international community. International human rights law makes it possible for individuals from a country to bring their own country before international institutions.

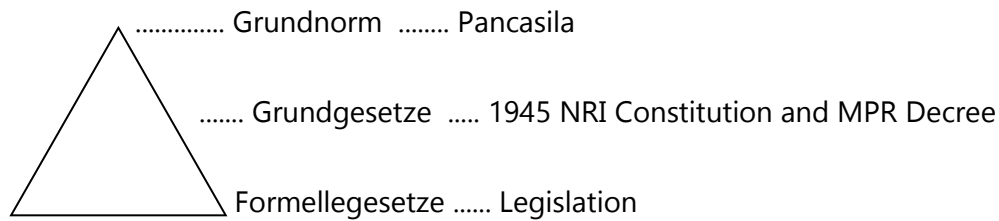
3.3. Human Rights in the Indonesian Legal System

The regulation of human rights in Indonesia is not immune to international influences and relationships. Several international conventions have been adopted in Indonesian legal principles to provide protection to the community. These international conventions relating to human rights are then reinforced in Indonesian legislation.

Pancasila as the source of all sources of law in Indonesia, is structured based on the concept of human rights, Western and Socialist concepts, and the UN Declaration. The essence of Pancasila is structured based on its formulation and the placement of its principles in the Preamble of the 1945 Constitution of the Republic of Indonesia, therefore Pancasila is the foundation of the state in the sense of ideology and philosophy of life. In other words, Pancasila is the state ideology or Pancasila is the state philosophy of life. As an ideology or as a philosophy of life, Pancasila is a guideline for state behavior and state life. In MPRS Decree Number XX/MPRS/1966, Pancasila is mentioned as the "source" of all legal sources.¹⁷ Thus, Pancasila is above the 1945 Constitution of the Republic of Indonesia and all laws and regulations. In this position, Pancasila is a source of inspiration and content for the 1945 Constitution of the Republic of Indonesia (directly) and for laws and regulations (indirectly). This means that within the framework of the hierarchical structure of legal norms, Pancasila is considered a "Grundnorm" based on the theory of Hans Kelsen and Hans Nawiasky about the layers of legal norms. In this position, Pancasila has the nature and quality that is considered "presupposed". To explain it further, a diagram of the layers of legal norms can be made based on the theory of Hans Kelsen and Hans Nawiasky.¹⁸

¹⁷ Fais Yonas Bo'a, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional," *Jurnal Konstitusi* 15, no. 1 (2018): 27–49, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/download/1512/351>.

¹⁸ Wendy Budiati Rakhmi, "SUMBER HUKUM DAN TATA URUTAN PERATURAN PERUNDANG-UNDANGAN DI INDONESIA," *Jurnal Majelis* 5, no. 1 (2018): 1–18, https://www.mpr.go.id/pengkajian/2018_JM_PSPPIBPSSSHN.pdf.



The 1945 Constitution of the Republic of Indonesia was formed before the UN Declaration on Human Rights was announced. Therefore, the thoughts contained therein are original, based on the cultural traditions of Indonesian society itself. According to BPUPKI, human rights have received enough attention, although not in great detail. Freedom, which is the basic concept, is then stated in the *preamble* as follows: "... That freedom is in fact the right of all nations and therefore colonization must be abolished throughout the world, because it is not in accordance with humanity and justice."¹⁹

The existence of human rights instruments is an achievement in the struggle for the enforcement of human rights, namely the availability of guidelines that can be used in assessing the behavior of some members of society, especially the behavior of those in power towards those who are not. However, a problem that seems difficult to solve in providing protection for human rights is the striking difference between the results that have been achieved in the form of human rights instruments and their implementation.

The low level of implementation of human rights instruments is demonstrated, among other things, by the ongoing practices of torture (acts of violence) and various forms of cruel behavior towards humans which are manifestations of human rights violations, especially those committed by fellow citizens themselves, even though an anti-torture convention has been in force since 1948.²⁰ According to this convention, torture or other cruel punishment is defined as follows:

"Any action taken directly or indirectly by government officials that causes severe physical or mental pain or suffering to a person on a continuous basis with the aim of threatening, gaining recognition, punishing or discriminating".

Therefore, according to Peter Baehr, et al²¹, All countries must take administrative measures, effective law enforcement, and other efforts necessary to prevent acts of torture in all areas under their jurisdiction. On the other hand, the rise of "mob trials" reflects a lack of legal awareness in society, as they tend to resolve problems by informally enforcing the law. Efforts to understand the development of "mob justice" should probably be positioned in the broad context of the occurrence of violence against the law itself, which cannot fulfill the public sense of justice.

At the special UN session held in November 1998, it was then stipulated in the MPR

¹⁹ SEKRETARIAT JENDERAL MPR RI, *UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945*, 19th ed. (Jakarta: Sekretariat Jenderal MPR RI, 2020), https://mpr.go.id/img/sosialisasi/file/1610334013_file_mpr.pdf.

²⁰ Yustitiningtyas, "PERTANGGUNGJAWABAN PIDANA OLEH KORPORASI DALAM TINDAKAN PELANGGARAN HAM DI INDONESIA."

²¹ Yustitiningtyas.

Decree Number XVII/MPR/1998 concerning Human Rights²² which states that human beings as creatures of God Almighty are endowed with the basic right, namely the human right, to be able to develop personally, to play a role and to contribute to the welfare of human life. The Preamble to the 1945 Constitution has enshrined the recognition, respect and will for the implementation of human rights in the conduct of social, national and state life. The Indonesian nation, as part of the world community, should respect the human rights enshrined in the UN Universal Declaration of Human Rights and various other international human rights instruments. The contents of the UN Human Rights Charter include the right to life, the right to family life and to procreate, the right to self-development, the right to justice, the right to freedom, the right to freedom of information, the right to security and the right to welfare.

Based on the Decree of the Indonesian People's Consultative Assembly Number XVII/MPR/1998 Article 4, the implementation, counseling, assessment, monitoring, research and mediation of human rights are carried out by a National Human Rights Commission established by law. The provisions of Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia of 1999 Number 165) contain the right to life, family and continuation of the offspring, self-development, obtaining justice, the right to personal freedom, the right to a sense of security, the right to welfare, the right to participate in government, women's rights and children's rights.

In addition, the Government also formed Law Number 26 of 2000 concerning Human Rights Courts, including the regulation of genocide and crimes against humanity as stipulated in Law Number 5 of 1998 (State Gazette of the Republic of Indonesia 1998 Number 164) concerning the Convention Against Torture and Cruel Punishment. Then the 1945 Constitution of the Republic of Indonesia also regulates Human Rights, the regulations of which are in Chapter XA Article 28 letter a to Article 28 letter j. There are several conventions that have been ratified by the Government of Indonesia, including The 1949 Geneva Convention was ratified through Law Number 59 of 1958, the Convention on the Political Rights of Women (Convention on the Political Rights of Women) was ratified through Law Number 68 of 1958, the Convention on the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Woman) was ratified through Law Number 7 of 1984, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction (Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction) ratified through Presidential Decree Number 58 of 1991, the Convention on the Rights of the Child (Convention on the Right of the Children) ratified through Presidential Decree Number 36 of 1990, the International Convention Against Apartheid in Sports (International Convention Against Apartheid in Sports) ratified through Law Number 48 of 1993, the International Labor

²² SEKRETARIAT JENDERAL MPR RI, "KETETAPAN MAJELIS PERMUSYAWARATAN RAKYAT REPUBLIK INDONESIA NOMOR XVII/MPR/1998" (1998), [https://www.komnasham.go.id/files/1475231662-tap-mprno-xvii-mpr-1998-tentang-\\$7XDJK.pdf](https://www.komnasham.go.id/files/1475231662-tap-mprno-xvii-mpr-1998-tentang-$7XDJK.pdf).

Organization Convention No. 87 of 1998 concerning Freedom of Association and Protection of the Right to Organize (ILO Convention No. 87 Concerning Freedom of Association and Protection in the Right to Organize) was ratified through Presidential Decree Number 83 of 1998, the Convention against Torture and other cruel, (Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment) by Law Number 5 of 1998, and the International Convention on the Elimination of All Forms of Racial Discrimination (International Convention on the Elimination of All Forms of Racial Discrimination) ratified through Law Number 29 of 1999.

The laws and regulations governing human rights that we have today can be said to be sufficient as a basis for law enforcement and justice against various phenomena of human rights violations. Thus, regulations governing human rights are used as one of the factors that encourage the protection of human rights. In the era of openness in all dimensions of life that has hit Indonesia, this is an inevitable phenomenon due to the awareness of the importance of communication and technological progress which continues to develop and is able to penetrate all aspects of human life. Openness is one phase in the democratization process that contains the elements of accountability and transparency which are necessary in an effort to encourage the protection of human rights. Entering the 90s, the Indonesian political climate was colored by the *discourse* on political democracy as an inseparable part of the national development process. Democratization became a demand from the public who wanted institutional changes such as the functionalization of people's representative institutions and changes in all fields, including institutional changes from the functionalization of people's representative institutions (legislative) and changes in the treatment of the universal essence of democracy, one of which is respect for human rights.

In Mahfud's opinion²³, Democracy is important for the people who use it because with democracy, the people's right to determine the course of the state organization will be guaranteed. The issue of openness is closely related to democratization, so conceptually we can refer to two actors that are conducive to realizing democratization, namely the state and civil society. In this regard, Indonesia has entered a new phase in the debate about democracy and democratization. At the level of political reality, the role of *civil society* is expected to strengthen, because *civil society* is an important actor in the efforts towards democracy.

The issue of openness, which continues to roll, has received a positive response from the Government, which is increasingly tolerant of changes in the increasingly critical lower class. In this context, the Government cannot escape from objective conditions, on the one hand, it is under pressure from the international world. The Government must carry out political accommodation due to the pressure of economic and cultural developments, both internationally and nationally, which demand adjustments. It is the development of these objective conditions that forces the Government to make changes. The role of civil society in Indonesia is often found in the form of unconventional political participation such as

²³ Mahfud MD Moh, "Politik Hukum Hak Asasi Manusia Di Indonesia," *Jurnal Hukum UII* 14, no. 7 (2000): 1-30, <https://journal.uii.ac.id/IUSTUM/article/download/5005/4437>.

demonstrations. This is a role that can be played to move towards democratization and to articulate demands. This phenomenon is gaining momentum because formal institutions are considered slow to realize this democratization. Therefore, the issue of political openness is seen by some as an opportunity to participate through political channels, even if the methods they use are more aggressive and unconventional.

The indications of openness and freedom are clearly stated in the 1945 Constitution, but in everyday practice it is difficult to implement this in earnest, which essentially relates to human ethics and morals as citizens. The right to be open and the right to express opinions basically contain the context of facts and truth and are beneficial to the public interest. The right to freedom of expression must be limited in cases where the statements and publications concerned will create dangers for the existence of democracy itself. However, all of this cannot be accommodated as forms of democratization which in fact are purely criminal acts and disturbances of public order. Therefore, a comprehensive analysis is needed to assess whether a case can be made into a human rights issue or not. The reality of Indonesian society is that it is at two contradictory points of tendency: the tendency to have unlimited freedom which easily increases the level of conflict to become high and protracted, so that society is divided into primordial boxes, and the tendency to turn off conflicts that lead to authoritarian attitudes and behavior.

If we re-analyze the framework of thought underlying Pancasila Democracy, it is a concept of democracy in which Pancasila, as the basis of the Indonesian state, provides a foundation of values for the concept of democracy applied in Indonesia. In this context, Pancasila democracy refers to the political system in Indonesia that is run in accordance with the principles and values of Pancasila.²⁴ There is even a new tendency that this openness is like a "rubber band" that can move elastically, shrinking or expanding as the Government wishes. However, the issue of openness that has been raised must still be responded to by the Government because objective reality requires it. The issue of openness is an important factor in efforts to provide protection for human rights.

In events in recent years, the Indonesian Journalists' Alliance (AJI) has drawn the attention of the National Human Rights Commission and the State Administrative Court to the publication of critical books, indicating that socio-political conflicts stemming from differences of interest and ideology in Indonesia are reaching a peak. In this context, the role of the middle class is certainly expected to trigger change in a more democratic direction. We can see the role of the middle class in the spontaneous reaction of students to demonstrate to demand the resolution of the Semanggi case that killed their colleagues, fellow students. They resisted both by taking to the streets and through legal channels.

3.4. Elaboration of Pancasila Values in Its Function as the Nation's Philosophy of Life

Humans, who were created by Almighty God, are naturally inclined to live in groups. Human groups will always experience change and development. Human development from a

²⁴ Maksum Rangkuti, "Demokrasi Pancasila Pengertian, Ciri, Aspek, Prinsip, Dan Penerapannya," Fakultas Hukum UMSU, 2023, <https://fahum.umsu.ac.id/demokrasi-pancasila-pengertian-ciri-aspek-prinsip-dan-penerapannya/>.

group to a state where they have strong and harmonious bonds. This is a sign of a human group with certain characteristics that distinguish them from other human groups. This group grew and became ethnic tribes.

Each ethnic group is distinguished by the different values and morals that they adhere to together. Based on this, we can mention the existence of ethnic groups such as Minangkabau, Batak, Javanese, Flores, Sundanese, Madurese, and so on. A part of Indonesian society is referred to as an ethnic group because they form groups of people with certain life goals. These different life goals distinguish them from other ethnic groups in Indonesia. Therefore, we recognize that there are different outlooks on life among tribes such as Javanese, Sundanese, Batak, Flores, Madurese, and others.

This is what unifies the outlook on life for the Indonesian nation, even though they come from different tribes. The unity of the Indonesian nation is realized through belief in God Almighty and the strength of tradition as the norms and values of life in society. This shared outlook on life binds the various ethnic groups in the archipelago. Our outlook on life as a nation and a country is reflected in the philosophy of Pancasila, which provides direction for every Indonesian regarding the future they wish to achieve. This is the shared outlook on life of the Indonesian people, as reflected in the five principles of Pancasila, whose values can be described as follows:

3.4.1. Honor of God Almighty

With the basis of divinity, Indonesia recognizes and believes in the existence of God. The One God, who is the cause of the existence of humans and the universe and all life in it. This basis guarantees the freedom of every Indonesian to embrace their religion/belief, as stated in Article 29 of the 1945 Constitution of the Republic of Indonesia. The values of divinity that form the basis or soul of the organization of the state do not only come from a particular religion or belief, but are based on the universal principles of religious teachings and beliefs. All religions and beliefs in Indonesia certainly teach values of goodness. That is the essence of the values of divinity.²⁵

3.4.2. The Philosophy of Just and Civilized Humanity

The spirit of humanity is very important for the life of a nation in an independent country in relation to other nations. Human beings are God's creatures, and God does not make any distinction between human beings. This view gives rise to a broad perspective, not bound by the boundaries of one's own country or nation, but rather that the country must always open the door to world friendship on the basis of equality. Human beings have the same rights, therefore it is not justified for one human being to dominate another, or for one nation to dominate another. In this regard, it does not justify colonization on earth, because it is contrary to the spirit of humanity and the right of every nation to determine its own destiny.²⁶ The truth is that human beings are born

²⁵ Arief Hidayat, "INDONESIA NEGARA BERKETUHANAN," *Mahkamah Konstitusi*, 2014, 1–8, <https://www.mkri.id/index.php?page=download.Artikel&id=14>.

²⁶ Jimly Asshiddiqie, "Hak Asasi Manusia Dan Hak Warga Negara," *Mahkamah Konstitusi*, 2021, <https://www.mkri.id/index.php?page=web.Berita&id=17582&menu=2>.

with rights that cannot be taken away or eliminated. These rights must be respected by everyone. The ruling class is not allowed to impose its will in a way that goes against the rights of the individual.

3.4.3. Sila Indonesian Unity

On the basis of nationality (nationalism), it is intended that the Indonesian nation as a whole must foster close unity among its citizens, without discriminating against ethnic groups or groups and based on a unified determination and a common ideal. The principle of nationality must be based on mutual cooperation (being able to develop unity from various differences, "unity in diversity"); not a nationality that negates differences or rejects unity.²⁷

3.4.4. A People-Oriented System Led by Wisdom in Deliberation/Representation

The basic principles of agreement, sovereignty of the people, or democracy show that Indonesia is a country that adheres to democratic principles. The principle of democracy implies that the supreme power to govern the country and the people rests with the people as a whole. The 1945 Constitution states that "sovereignty rests with the people and is exercised fully by the Consultative Assembly of Representatives". Indonesian democracy as stated in the Preamble to the 1945 Constitution is a democracy as stated in Pancasila as the fourth principle and is called Pancasila democracy. The principle of democracy in Indonesia is democracy based on Pancasila which covers the political, social and economic fields, and in the resolution of national issues, it tries as far as possible to take the path of deliberation to reach a consensus.²⁸

3.4.5. The Principle of Social Justice for All Indonesians

In a speech on June 1, 1945, it was emphasized that the principle of welfare is the principle of the absence of poverty in an independent Indonesia. Social justice is the nature of a just and prosperous society, happiness for everyone, no slavery, no oppression, and humiliation, everyone is happy, with enough food and clothing. This principle unanimously means that every Indonesian citizen receives fair treatment in the legal, political, economic, socio-cultural, and defense security fields.²⁹

If we study it more deeply, it can be seen that the elaboration of the principles contained in Pancasila is a reflection of all aspects of national life. Thus Pancasila can be used as a guideline or philosophical basis in the formation of every regulation.

3.5. Implementation of Pancasila Values in the Enforcement of Human Rights in Indonesia

Human rights enforcement in Indonesia has not shown significant progress in handling

²⁷ Yudi Latif, "Reaktualisasi Pancasila," *Pusat Pendidikan Pancasila Dan Konstitusi*, 2020, 1–28, [https://pusdik.mkri.id/materi/materi_197_Reaktualisasi Pancasila \(Yudi Latif\).pdf](https://pusdik.mkri.id/materi/materi_197_Reaktualisasi_Pancasila_(Yudi_Latif).pdf).

²⁸ Al Muhammad Yani, *Optimalisasi Peran Partai Politik Guna Mengembangkan Demokrasi Pancasila Dalam Rangka Ketahanan Nasional*, Lembaga Ketahanan Nasional RI (Jakarta: Perpustakaan Lemhannas RI, 2013), <http://lib.lemhannas.go.id/public/media/catalog/0010-011600000000137/swf/3820/files/basic-html/page16.html>.

²⁹ Ferry Irawan Febriansyah, "KEADILAN BERDASARKAN PANCASILA SEBAGAI DASAR FILOSOFIS DAN IDEOLOGIS BANGSA," *DiH Jurnal Ilmu Hukum* 13, no. 25 (2017): 1–27.

human rights cases. In the process of human rights enforcement, there are often two conflicting forces, namely groups that are pro and contra to the enforcement itself. The defense of human rights enforcement in Indonesia is vulnerable to attack. Ironically, this is because the activities of human rights defenders in fighting for human rights are considered to interfere with the interests of other groups that are "anti" human rights. Human Rights Defenders are individuals or groups who carry out their duties in promoting human rights in a peaceful manner. Human rights defenders are protected in carrying out their duties by the 1945 Constitution Article 28C paragraph (2) which states that everyone has the right to put themselves forward in fighting for their rights collectively to build society, the nation and the state. In addition, the UN General Assembly, based on Resolution 53/144, passed the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, better known as the Declaration on Human Rights Defenders, on December 9, 1998.

Based on Imparsial's records, the groups that carry out many attacks on human rights defenders can be categorized into two main groups, namely³⁰ State apparatus or *State Actors*, including the police, the TNI, the intelligence apparatus and the Trantib apparatus, and *Non-State Actors*, which include thugs/gangsters, organized armed groups, financier groups that use state or non-state apparatus to carry out attacks, and fundamentalist groups. The gross human rights violations that have occurred in Indonesia show that the values contained in the Pancasila are no longer applied by law enforcers and rulers. It can even be said that the spirit of the Pancasila is not present in their hearts, even though the Pancasila is still considered the identity and unifying force of the Indonesian nation. The fading of Pancasila and the identity of the nation has made the perpetrators of gross human rights violations, law enforcement officials, and the Government forget the history of the Indonesian nation. All human rights regulations in Indonesia originate from Pancasila because Pancasila occupies the top position in the hierarchy of laws and regulations as the main source of all laws.

4. CONCLUSION

In the enforcement of human rights in Indonesia, it is still far from the true meaning of justice, because it is still influenced by the interests of the rulers, law enforcement officials, and so on. The enforcement of human rights is also still very far from the values of Pancasila, which can actually be used as a guide or outlook for the nation's behavior, because the elements of arbitrariness and oppression are still widely felt by the victims of gross human rights violations who have not yet felt justice. The government should be firmer and more serious in upholding human rights without looking at the various interests behind it, so that justice can be felt by all Indonesian people as mandated in the principles of Pancasila. It is necessary to reformulate laws and regulations in the field of human rights to provide legal guarantees and certainty to

³⁰ Gufron Maburi, "Tebang Pilih Agenda Pemajuan Dan Penegakan HAM," Imparsial, 2021, <https://imparsial.org/4291-2/>.

the community.

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