



BULLYING AND LEGAL ACCOUNTABILITY: VICTIMS' COMPENSATION IN INDONESIAN CRIMINAL, CIVIL, AND ADMINISTRATIVE LAW

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Abstract: Human Rights (HAM) is a basic right that is inherent in every individual from birth and must be respected, protected, and fulfilled by the state. In the rule of law, the protection of human rights is one of the main indicators of the upholding of the rule of law and justice. The Indonesian criminal law system essentially functions not only as an instrument to tackle crime but also as a means of protecting individual rights for victims, suspects, defendants, and convicts. This research aims to analyze the position of human rights in the Indonesian criminal law system, examine its implementation across various stages of the criminal justice process, and identify the challenges to realizing a criminal justice system oriented toward respect for human rights. This study employs normative legal research methods, including a statutory, conceptual, and case approach. The legal materials used consist of primary, secondary, and tertiary sources, which are analyzed qualitatively through literature review techniques. The results of the study show that the position of human rights in the Indonesian criminal law system has a very fundamental position because it is constitutionally guaranteed in the 1945 Constitution of the Republic of Indonesia and various other laws and regulations, including Law Number 39 of 1999 concerning Human Rights and Law Number 1 of 2023 concerning the Criminal Code. However, the implementation of human rights protection still faces various challenges in the form of torture practices, disproportionate detention, violations of the principle of presumption of innocence, and the lack of optimal monitoring mechanisms for law enforcement officials. Therefore, it is necessary to strengthen regulations, enhance the professionalism of law enforcement officials, and harmonize criminal policies that are oriented towards human rights protection.

Keywords: Human Rights; the Criminal Law System; Protection; Children.

I. INTRODUCTION

Indonesia is a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence of the principle of the rule of law is that all the exercise of state power must be carried out based on the law and uphold respect for human rights (HAM). The state not only has the authority to enforce the law through the criminal justice system, but is also obliged to ensure that any law enforcement action still respects the basic rights of every citizen without discrimination.¹

Human Rights are rights inherent in humans as a gift from God Almighty so that their existence cannot be taken away by anyone. In the perspective of modern law, human rights are the main foundation for the establishment of a democratic and just national legal system. Therefore, every criminal law policy must be placed within the framework of respect for human *dignity*, so that law enforcement is not solely oriented towards punishment, but also on the protection of individual rights.²

The development of human rights protection in Indonesia has made significant progress after the 1998 Reformasi era. The amendment to the 1945 Constitution of the Republic of Indonesia presents Chapter XA on Human Rights which contains various constitutional guarantees for the rights of citizens. In addition, the birth of Law Number 39 of 1999 concerning Human Rights emphasized the state's commitment to implementing human rights principles into the national legal system. The establishment of various independent institutions such as the National Commission on Human Rights (Komnas HAM) is also part of efforts to strengthen the human rights protection mechanism in Indonesia.³

In the context of criminal law, the protection of human rights has a very important position because criminal law is the branch of law that gives the most authority to the state to restrict individual freedom. Arrest, detention, search, confiscation, examination, and criminal execution are forms of restriction of rights that can only

¹ Jimly Asshiddiqie, 2010. *Indonesian Constitution and Constitutionalism*. Jakarta: Sinar Grafika, p. 121.

² M. Yahya Harahap, 2016. *Discussion of Problems and Implementation of the Criminal Code: Investigation and Prosecution*. Jakarta: Sinar Grafika, p. 34.

³ Majda El-Muhtaj, 2017. *Human Rights in the Indonesian Constitution*. Jakarta: Kencana, p. 41.

be carried out under the law and must meet the principles of legality, proportionality, accountability, and respect for human dignity.⁴

On the other hand, the practice of criminal law enforcement in Indonesia still shows various problems related to the protection of human rights. Various national and international agency reports still record the practice of torture in the examination process, excessive use of force by law enforcement officials, detention that does not meet the principles of *due process of law*, discrimination in law enforcement, and violations of the principle of presumption of innocence. This condition shows that there is a gap between legal norms and implementation in the field.⁵

Reform of criminal law through Law Number 1 of 2023 concerning the Criminal Code is one of the important steps in modernizing the Indonesian criminal law system. The National Criminal Code prioritizes a balance between the interests of the state, the interests of victims, perpetrators, and the community. In addition, various new concepts such as *restorative justice*, alternative crimes, supervision crimes, and strengthening the purpose of punishment show a paradigm shift from a retributive approach to a more humanist approach.

However, the success of criminal law reform is not only determined by the establishment of good legal norms, but also by the consistency of law enforcement officials in implementing human rights principles at every stage of the criminal justice process. Law enforcement that ignores human rights has the potential to cause public distrust of the judicial system, increasing abuse of *power* practices, and violations of citizens' constitutional rights. Therefore, strengthening a legal culture that respects human rights is a need that cannot be ignored.

Theoretically, the position of human rights in the criminal law system reflects the relationship between the state's interest to maintain public order and the state's obligation to protect individual rights. Modern criminal law is no longer understood only as a repressive instrument, but also as a means of protecting human rights through the application of the principles of legality, the principle of presumption of innocence, the right to legal aid, the right to *a fair trial*, and the prohibition of torture and treatment that degrades human dignity. These principles have been part of

⁴ Barda Nawawi Arief, 2018. *Bunga Potpourri Criminal Law Policy*. Jakarta: Kencana, p. 56.

⁵ Mahrus Ali, 2021. *Protection of Human Rights in the Indonesian Criminal Justice System*. Journal of Constitution 18, no 2, p. 210 – 229.

various international instruments, such as the *Universal Declaration of Human Rights* (UDHR) of 1948 and the *International Covenant on Civil and Political Rights* (ICCPR), which have been ratified by Indonesia.

Based on this description, this research is important to comprehensively examine the position of Human Rights in the Indonesian criminal justice system, analyze the implementation of human rights protection in the criminal justice process, and identify various challenges and efforts that can be made to realize a more just, democratic, and respectful national criminal law system.

II. RESEARCH METHODS

This research is normative *legal research*, which aims to examine the legal norms that govern the position of Human Rights (HAM) in the Indonesian criminal law system. Normative legal research places law as a norm or rule that applies in the system of laws and regulations, court decisions, legal doctrines, and various national and international legal instruments that have been ratified by Indonesia. Therefore, the focus of the research is directed at the analysis of the synchronization of legal norms, the principles of criminal law, and the concept of human rights protection in the criminal law enforcement process.⁶

The research approach used consists of **a statute approach, a conceptual approach, and a case approach**. The legislative approach is carried out by examining various regulations related to the protection of human rights in the criminal law system, including the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 8 of 1981 concerning the Criminal Procedure Law, Law Number 1 of 2023 concerning the Criminal Code, and various international conventions that have been ratified by Indonesia.⁷

The conceptual approach is used to analyze various theories about the rule *of law*, human rights, the purpose of punishment, the principle of legality, *due process of law*, *fair trial*, and *restorative justice*. This approach is needed to provide a

⁶ Peter Mahmud Marzuki, 2021. *Legal Research*. Jakarta: Kencana, p. 35 – 38.

⁷ Soerjono Soekanto & Sri Mamudji, 2019. *Normative Law Research*. Jakarta: Rajawali Press, p. 14 – 16.

theoretical basis in understanding the relationship between human rights protection and national criminal law policy.⁸

Meanwhile, the case approach is carried out by examining various court decisions, Constitutional Court decisions, and law enforcement practices related to the protection of human rights in the criminal justice process. The analysis of these cases is intended to find out the extent to which human rights principles have been implemented in criminal justice practice in Indonesia.⁹

The legal materials used in this study consist of **primary legal materials**, **secondary legal materials**, and **tertiary legal materials**. Primary legal materials include laws and regulations, Constitutional Court rulings, Supreme Court rulings, and various international human rights instruments such as *the Universal Declaration of Human Rights* (UDHR) of 1948, *the International Covenant on Civil and Political Rights* (ICCPR), and *the Convention Against Torture* (CAT). Secondary legal materials are in the form of law books, articles from national and international scientific journals, research results, and opinions of legal experts. The tertiary legal materials include legal dictionaries, legal encyclopedias, and various other supporting references.¹⁰

The technique of collecting legal materials is carried out through **library research**, which is by inventorying, identifying, classifying, and reviewing various literature relevant to the object of research. All legal materials are then analyzed using a qualitative analysis method with a descriptive-analytical approach. The analysis is carried out through the process of legal interpretation, systematic interpretation, and synchronization between national legal norms and international human rights principles so that a comprehensive conclusion is obtained about the position of human rights in the Indonesian criminal law system.¹¹

⁸ Johnny Ibrahim, 2020. *Normative Law Research Theory and Methodology*. Malang: Bayumedia, p. 295.

⁹ Mukti Fajar ND & Yulianto Achmad, 2020. *Dualism of Normative and Empirical Law Research*. Yogyakarta: Pustaka Siswa, p. 185.

¹⁰ Zainuddin Ali, 2022. *Legal Research Methods*. Jakarta: Sinar Grafika, p. 107.

¹¹ Sugiyono, 2023. *Qualitative Research Methods*. Bandung: Alfabeta, p. 182.

III. ANALYSIS AND DISCUSSION

a. The Position of Human Rights in the Indonesian Legal System

Human Rights are basic rights that every human being has since birth as a gift from God Almighty. These rights are universal, *inalienable*, and must be respected by every country regardless of race, religion, gender, ethnicity, or social status. In the context of the modern legal state, the protection of human rights is one of the main indicators of the implementation of the *principle of the rule of law*. Therefore, the state has an obligation to respect, *protect*, and fulfill the rights of every citizen.¹²

The Indonesian Constitution provides a very strong position on human rights through Chapter XA of the 1945 Constitution of the Republic of Indonesia. Articles 28A to 28J regulate various basic rights of citizens, including the right to life, the right to justice, the right to security, freedom of religion, the right to equal treatment before the law, and the right not to be tortured. These provisions show that human rights are an integral part of the Indonesian constitutional system.¹³

The strengthening of human rights protection is further emphasized through Law Number 39 of 1999 concerning Human Rights which comprehensively regulates various civil, political, economic, social, and cultural rights. The law also emphasizes that the protection of human rights is the responsibility of the state, especially the government and all law enforcement officials. Thus, every criminal law policy must pay attention to human rights principles as the main basis for the formation and implementation of the law.¹⁴

b. The Position of Human Rights in the Indonesian Criminal Law System

The Indonesian criminal law system is essentially an instrument of the state to maintain public order while protecting the rights of citizens. Therefore, criminal law should not only be understood as a repressive tool to punish the perpetrators of criminal acts, but must also ensure the protection of the rights of suspects, defendants, victims, witnesses, and convicts.¹⁵

¹² Jimly Asshiddiqie, 2015. *Introduction to Constitutional Law*. Jakarta: Rajawali Press.

¹³ Majda El-Muhtaj, 2017. *Ibid*.

¹⁴ Rhona K. M. Smith et al, 2018. *Human Rights Law*. Yogyakarta: PUSHAM UII.

¹⁵ Barda Nawawi Arief, 2018. *Ibid*.

This principle is reflected in various principles of criminal law, including the principle of legality (*nullum crimen sine lege*), the principle of *presumption of innocence*, the principle of *equality before the law*, the principle of fair trial, and the principle of *due process of law*. These principles are the main instrument in preventing abuse of authority by law enforcement officials.¹⁶

In addition, the Criminal Procedure Code provides various protection guarantees for suspects and defendants, such as the right to obtain legal assistance, the right not to be tortured, the right to contact family, the right to obtain health services, and the right to file a pretrial application in the event of unlawful arrest or detention. This guarantee shows that the protection of human rights is an integral part of the Indonesian criminal justice system.¹⁷

Table 1: Implementation of Human Rights Principles in the Indonesian Criminal Law System

Human Rights Principles	Legal Basis	Implementation in the Criminal System
Equality before the law	Article 27 paragraph (1) of the 1945 Constitution	Everyone is treated equally without discrimination
The right to justice	Article 28D of the 1945 Constitution	The right to a fair trial
Legality Principles	Article 1 of the National Criminal Code	No criminal law
Presumption of innocence	KUSHMIR	The suspect is presumed innocent before there is a verdict with permanent legal force
Prohibition of torture	Law No. 39 of 1999	Mandatory examination respects human dignity
Legal aid	Law No. 16 of 2011	Suspect has the right to legal counsel
Restorative justice	Law No. 1 of 2023	Restoration-oriented case solving

¹⁶ M. Yahya Harahap, 2016. *Ibid*.

¹⁷ Andi Hamzah, 2021. *Indonesian Criminal Procedure Law*. Jakarta: Sinar Grafika.

c. Implementation of Human Rights Protection in the Criminal Justice Process

The implementation of human rights in the criminal justice system must begin from the stage of investigation, investigation, prosecution, examination in court, to the implementation of criminal decisions. Every action of law enforcement officials must comply with the principles of legality, proportionality, accountability, and respect for human dignity. In practice, various regulations have regulated the limits of the authority of the authorities to prevent arbitrary actions against individuals who are in conflict with the law.¹⁸

Nevertheless, various academic reports and independent institutions show that there are still challenges in the implementation of human rights principles. Some of the problems that are often found include the use of violence in the examination process, excessive detention, slow judicial processes, violations of the principle of presumption of innocence through *trial by media*, and limited access to legal aid for the underprivileged. This condition shows that criminal law reform must be followed by institutional reform and increased professionalism of law enforcement officials.¹⁹

d. Challenges of Human Rights Enforcement in the Indonesian Criminal Law System

Although Indonesia already has various legal tools that guarantee the protection of human rights, its implementation in the criminal law system still faces various challenges. The problem is not only related to the *legal substance*, but also concerns the *legal structure* and *legal culture* as stated by Lawrence M. Friedman. These three elements influence each other so that the effectiveness of human rights protection is not only determined by the quality of laws and regulations, but also by the professionalism of law enforcement officials and the legal awareness of the community.

One of the main challenges is the discovery of torture practices and treatment that degrades human dignity in the investigation process. Although Law No. 39 of 1999 on Human Rights guarantees the right of everyone to be free from torture, in practice there are still reports of the use of physical and psychological violence to

¹⁸ Eva Achjani Zulfa, 2023. *The New Paradigm of Criminalization in the National Criminal Code*. Journal of RechtsVinding 12, no. 1, p. 1 – 18.

¹⁹ Mahrus Ali, 2021. *Ibid*.

obtain confession from suspects. This practice is contrary to Article 28G paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the *Convention Against Torture* (CAT), as well as the principle of *due process of law*.

The next problem is that there is still disproportionate detention. In criminal justice practice, detention is often the main step even though the law provides other alternatives, such as suspension of detention, city detention, and house arrest. As a result, correctional institutions experience overcrowding, which has an impact on declining the quality of inmate coaching and has the potential to cause human rights violations.

In addition, the protection of the principle of the *presumption of innocence* still faces serious challenges. In some cases, public opinion formed through mass media and social media often judges a person before a court decision that has permanent legal force. The phenomenon of *trial by media* is not only detrimental to the suspect or defendant, but can also affect the objectivity of the law enforcement process.

Another challenge is the unequal access to legal aid. Although Law Number 16 of 2011 concerning Legal Aid guarantees the right of the poor to obtain free legal aid, its implementation still faces various obstacles, such as the limited number of legal aid organizations, the lack of budget, and low public awareness of their rights. This condition causes there to still be suspects or defendants who undergo criminal proceedings without being accompanied by legal counsel.

e. Criminal Law Reform and Strengthening Human Rights Protection

The establishment of Law Number 1 of 2023 concerning the Criminal Code is part of a national legal reform that aims to replace the Dutch colonial heritage *Wetboek van Strafrecht* (WvS). The reform is not only oriented towards the renewal of criminal norms, but also accommodates the development of human rights, democracy, and social justice values that live in Indonesian society.

One of the important updates in the National Criminal Code is the regulation regarding the purpose of punishment. In contrast to the old paradigm that focused more on *retributive justice*, the National Criminal Code prioritizes a balance between community protection, perpetrator development, conflict resolution, victim recovery, and the creation of peace in society. This concept suggests that

punishment is no longer seen as a form of mere retribution, but rather as an instrument for realizing justice oriented towards respect for human dignity.

In addition, the National Criminal Code also introduces various alternative types of crimes, such as supervision crimes, social work crimes, and more proportionate fines. The presence of alternative criminal justice is expected to be able to reduce the use of prison sentences as the ultimate *remedium*, so as to overcome the problem of overcapacity of correctional institutions while increasing the effectiveness of fostering criminal offenders.

Criminal law reform is also marked by the increasing application of the concept of **restorative justice**. This approach focuses on conflict resolution through dialogue between perpetrators, victims, families, and communities to achieve the restoration of the situation. Thus, the settlement of criminal cases is not only oriented towards punishment, but also towards the restoration of social relations and the protection of the rights of all parties involved.

Table 2: Challenges and Efforts to Strengthen Human Rights in the Indonesian Criminal Law System

Problems	Impact	Improvement Efforts
Torture during investigations	Human rights violations and illegal confessions	Internal and external surveillance, use of <i>body cameras</i> , scientific evidence-based inspections
Overcrowding of correctional institutions	Declining quality of inmate coaching	Implementation of alternative crimes, diversion, and restorative justice
Trial by media	Violation of the principle of presumption of innocence	Guidelines for reporting criminal cases and media education
Limitations of legal aid	Injustice for the poor	Strengthening legal aid organizations and increasing budgets
Abuse of authority of the authorities	Declining public trust	Institutional reform, supervision, and code of ethics enforcement

f. Analysis of the Position of Human Rights in the Indonesian Criminal Law System

Normatively, the position of human rights in the Indonesian criminal law system is very strong because it has obtained constitutional legitimacy through the 1945 Constitution of the Republic of Indonesia, described in Law Number 39 of 1999 concerning Human Rights, and implemented in various laws and regulations that regulate material and formal criminal law. This position shows that the protection of human rights is not only a moral obligation of the state, but also a legal *obligation* that binds all state administrators.

However, the effectiveness of human rights protection does not only depend on the existence of regulations. Law enforcement that respects human rights requires law enforcement officials who are professional, independent, integrity, and accountable. In addition, an effective supervisory system and accountability mechanism are needed that are able to sanction every form of abuse of authority.

In the perspective of modern criminal law, the protection of human rights must also be realized through *a criminal policy* that is balanced between the interests of the state, the interests of the victims, the interests of the perpetrators, and the interests of the community. Therefore, the establishment of national criminal law must always refer to the principles of proportionality, legality, legal certainty, utility, and justice as developed in the doctrine of a democratic legal state.

Thus, it can be understood that human rights have a very fundamental position in the Indonesian criminal law system. All stages of the criminal justice process, from investigation, investigation, prosecution, examination in court, to the execution of the crime, must be carried out based on the principle of respect for human dignity. The success of the national criminal law system is ultimately measured not only by the number of cases that have been successfully resolved or the severity of the crimes imposed, but also by the extent to which the system is able to guarantee the protection of everyone's rights in a fair and dignified manner.

IV. CONCLUSION

Human Rights has a fundamental position in the Indonesian criminal law system because it is part of the principle of the state of law which is constitutionally guaranteed in the Constitution of the Republic of Indonesia in 1945 and

strengthened through Law Number 39 of 1999 concerning Human Rights, Law Number 8 of 1981 concerning the Criminal Procedure Law, and Law Number 1 of 2023 concerning the Criminal Code. Human rights protection is the foundation in every stage of the criminal justice process through the application of the principles of legality, the principle of presumption of innocence, the right to legal aid, the prohibition of torture, and guarantees of a fair *trial*.

Although the normative framework has provided strong assurances, the implementation of human rights protection in practice still faces various challenges, such as torture in the investigation process, disproportionate detention, limited access to legal aid, the phenomenon of *trial by media*, and abuse of authority by law enforcement officials. Therefore, criminal law reform must be accompanied by strengthening the integrity of law enforcement officials, improving the supervision system, optimizing legal aid, and implementing a more humane criminal policy through a *restorative justice* approach. Thus, the Indonesian criminal law system is expected to be able to realize a balance between legal certainty, justice, utility, and respect for Human Rights.

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