

**INSTITUTIONAL DESIGN AND CONSTITUTIONAL  
LEGITIMACY OF HUMAN RIGHTS SUPPORT INSTITUTIONS  
AFTER REFORMATION IN INDONESIA**

***DESAIN KELEMBAGAAN DAN LEGITIMASI KONSTITUSIONAL  
LEMBAGA PENUNJANG HAM PASCA REFORMASI  
DI INDONESIA***

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**ABSTRACT**

The normative framework of Articles 28A–28J of the 1945 Constitution and Law No. 39 of 1999, as well as the establishment of independent institutions supporting human rights protection as a manifestation of the state's commitment to guaranteeing the constitutional rights of citizens and fulfilling its international obligations, marked a significant transformation of Indonesia's human rights protection system during the transition from the New Order regime to the Reform era. This research attempts to fill the gap in comprehensive analysis of the institutional legitimacy of human rights, the urgency of their establishment, and the problems in the implementation of their functions and authorities. Legal materials are examined both descriptively and qualitatively in this study, which employs a normative juridical method with a legislative, case, and conceptual approach. The study's findings indicate that while the normative and institutional framework for human rights protection has been comprehensively regulated, the implementation of these institutions' functions still faces three main problems: overlapping authority (for example, between the Attorney General's Office and the National Commission on Human Rights in handling serious human rights cases), limited resources (budget and institutional capacity), and sociological aspects (low public awareness of the law). Therefore, there are three main aspects as recommendations from the institutional constraints

faced, namely strengthening the regulatory framework of authority, establishing coordination mechanisms between institutions, and providing adequate institutional capacity support.

**Keywords : Constitutional Legitimacy, Supporting Institutions Human Rights Protection, Post-Reform.**

### **ABSTRAK**

*Kerangka normatif Pasal 28A–28J UUD 1945 dan UU No. 39 Tahun 1999, serta pembentukan lembaga-lembaga independen yang mendukung perlindungan hak asasi manusia sebagai wujud komitmen negara dalam menjamin hak-hak konstitusional warga negara dan memenuhi kewajiban internasionalnya, menandai transformasi signifikan dalam sistem perlindungan hak asasi manusia di Indonesia selama masa transisi dari rezim Orde Baru menuju era Reformasi. Penelitian ini berupaya mengisi kekosongan dalam analisis komprehensif mengenai legitimasi kelembagaan hak asasi manusia, urgensi pembentukannya, serta permasalahan dalam pelaksanaan fungsi dan kewenangannya. Materi hukum ditelaah secara deskriptif dan kualitatif dalam studi ini, yang menggunakan metode yuridis normatif dengan pendekatan legislatif, yudisial, dan konseptual. Temuan penelitian menunjukkan bahwa meskipun kerangka normatif dan kelembagaan untuk perlindungan hak asasi manusia telah diatur secara komprehensif, pelaksanaan fungsi lembaga-lembaga tersebut masih menghadapi tiga masalah utama: tumpang tindih kewenangan (misalnya, antara Kejaksaan Agung dan Komisi Nasional Hak Asasi Manusia dalam menangani kasus-kasus pelanggaran hak asasi manusia yang serius), keterbatasan sumber daya (anggaran dan kapasitas kelembagaan), serta aspek sosiologis (rendahnya kesadaran masyarakat akan hukum). Oleh karena itu, terdapat tiga aspek utama sebagai rekomendasi dari kendala kelembagaan yang dihadapi, yaitu memperkuat kerangka regulasi kewenangan, membangun mekanisme koordinasi antar lembaga, dan memberikan dukungan kapasitas kelembagaan yang memadai.*

**Kata Kunci : Legitimasi Konstitusional, Lembaga Penunjang Perlindungan HAM, Pasca Reformasi.**

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## **I. INTRODUCTION**

The transition from the New Order regime to the Reform era marked a significant turning point in the development of the human rights protection system. This transition has paved the way for the reconstruction of national law through a critical evaluation of previously repressive legislation, and has spurred the creation of new legal instruments that are more progressive and responsive to human rights principles. Within this framework, the Indonesian

government has begun actively ratifying various international human rights instruments as a commitment to universal standards. This ratification process has substantially integrated various international human rights legal norms into Indonesia's legal framework, through the enactment of new laws and amendments to existing ones.<sup>1</sup>

Historically, the enforcement of human rights can be traced back to the enactment of the Magna Carta in England in 1215, which marked the beginning of restrictions on the king's absolute power. This development was followed by the "Petition of Rights" of 1628, followed by the U.S. Declaration of Independence in 1776, which affirmed the fundamental rights of citizens against tyranny, and in 1789 France followed suit by declaring the Declaration of the Rights of Man and of the Citizen/DDHC, which emphasized the importance of liberty, equality, and fraternity as universal principles.<sup>2</sup> This series of developments was subsequently codified on a global scale through the UDHR, which was adopted by the United Nations in 1948 as the primary instrument for protecting human rights at the international level. Many countries use the UDHR as a moral and legal foundation for protecting human rights, including Indonesia, which uses it as a reference for developing its legal framework and human rights policies.<sup>3</sup>

As seen in Indonesia, the creation of written legal documents in an attempt to uphold human rights is consistent with John Locke's notion of the rule of law, which is based on the idea of defending human rights. According to Locke, every person possesses inherent rights like the right to life, liberty, and property that cannot be taken away.<sup>4</sup> He asserts that these rights are a result of humanity's inherent capacity for reason and autonomy. According to Locke, humans are created in a state of equality and freedom, capable of independent thought and self-determination, free from the interference of any authority.

In Indonesia, the human rights protection system is characterized by three main branches responsible for protecting human rights: the executive, legislative, and judicial branches. In addition, there are independent institutions with specific mandates to protect human rights. These include: the National Human Rights Commission; the National Commission on

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<sup>1</sup> Artidjo Alkostar, *Pengadilan HAM, Indonesia Dan Peradaban* (Yogyakarta: PUSHAM UII, 2004).

<sup>2</sup> Ridwan Arifin and Lilis Eka Lestari, "Penegakan Dan Perlindungan Hak Asasi Manusia Di Indonesia Dalam Konteks Implementasi Sila Kemanusiaan Yang Adil Dan Beradab," *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (2019): 12–25, <https://doi.org/10.23887/jkh.v5i2.16497>.

<sup>3</sup> Eza Tri Yandy, Tri Endah Karya Lestiyani, and Cici Sundari, "Hak Anak Usia Dini Dalam Sistem Ketatanegaraan Di Indonesia," *Generasi Emas* 7, no. 1 (2024): 48–65, [https://doi.org/10.25299/ge.2024.vol7\(1\).13472](https://doi.org/10.25299/ge.2024.vol7(1).13472).

<sup>4</sup> Hasyim Aprita, "Pemikiran Hukum John Locke Dan Landasan Hak Asasi Manusia," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 1 (2024): 1–25, <https://journal.forikami.com/index.php/dassollen/article/view/552>.

Violence against Women; the Indonesian Child Protection Commission; the Judicial Commission; the Indonesian Broadcasting Commission; the Business Competition Supervisory Commission; the Witness and Victim Protection Agency; the General Election Commission; and the Ombudsman as an independent institution whose main task is to oversee the delivery of public services.

However, although this institutional framework has been established with clear functions, in practice it still faces a range of complex challenges. One of the main issues that has arisen is the overlap of authority among institutions, weak coordination, and limited resources in terms of both budget and institutional capacity.<sup>5</sup> Consequently, this has a negative impact on human rights protection and results in the ineffective handling of human rights violation cases.

The urgency of reforming human rights protection institutions has grown stronger in line with the increasing complexity of human rights violations in various forms. In addition, these institutions also serve to resolve human rights violations that are increasingly varied today, as recorded in several cases that have occurred: *First*, the Tanjung Priok Incident of 1984 was a tragedy marked by repressive actions by the authorities, including the use of armed force, which resulted in at least 24 deaths and 55 injuries.<sup>6</sup> Furthermore, the Trisakti University tragedy on 12 May 1998 became a concrete symbol of the repressive nature of power during the New Order era.

During that incident, four Trisakti students lost their lives and dozens more were injured as a result of the security forces opening fire on a crowd of protesters who were voicing their grievances.<sup>7</sup>

*Secondly*, the 2024 shooting incident involving members of the Semarang Police Headquarters Narcotics Investigation Unit against three students raised concerns in the context of the protection of the right to life, as the incident resulted in one fatality and two others sustaining injuries. Additionally, the murder of Vina in Cirebon in 2016 was a brutal act of violence perpetrated by a motorcycle gang.<sup>8</sup> *Third*, a case of sexual abuse involving the former Ngada Police Chief, AKBP Fajar Widyadharma, against three children in Kupang. This case attracted widespread attention because

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<sup>5</sup> Muhammad Faris Akbar et al., "Sinergi Kementerian Hukum Dan HAM Serta Komnas HAM Dalam Penegakan HAM Di Indonesia : Tinjauan Siyāsah Dustūriyyah" 9, no. 1 (2025): 364–374, <https://doi.org/https://doi.org/10.30743/mkd.v9i1.11321>.

<sup>6</sup> Wahyu Wibowo and Yusuf Setyadi, "Penegakan Hukum Hak Asasi Manusia Di Indonesia Dalam Kasus Pelanggaran Ham Berat: Studi Kasus Tanjung Priok, Timor Timur, Dan Abepura," *Journal of Islamic and Law Studies* 5, no. 1 (2021): 107–119, <https://doi.org/10.18592/jils.v5i2.5793>.

<sup>7</sup> Alifayah Fitrah Rahmadhani and Dodi Jaya Wardana, "Penyelesaian Pelanggaran HAM Berat Di Indonesia," *UNES Law Review* 6, no. 1 (2023): 2799–2807, <https://doi.org/10.31933/unesrev.v6i1.1056>.

<sup>8</sup> Komisi Nasional Hak Asasi Manusia RI, "Catatan Akhir Tahun 2024 Hak Asasi Manusia Di Indonesia," *Komnas HAM* (Jakarta: Komnas HAM RI, 2024).

the abuse was recorded, uploaded online, and detected by the Australian authorities.<sup>9</sup>

The above cases reveal the fact that a more responsive human rights protection system requires not only a normative approach, but also an institutional and practical one.

In addition, to maintain the originality of the research, this article contains a review of relevant literature that specifically discusses human rights protection institutions. *First*, Laurensius's research on the Human Rights Commission as a state auxiliary body in the enforcement of human rights focuses on its status and functions as an independent state auxiliary institution.<sup>10</sup> *Secondly*, According to Halili, substantively, the drafting of Law No. 26 of 2000 still contains a number of fundamental weaknesses. These weaknesses are evident, among other things, in the partial adaptation of the Rome Statute, the relatively weak institutional framework of the human rights judiciary whose authority is limited to the investigative stage and the nature of the regulations, which more closely resemble transitional authority instruments. Furthermore, its enactment cannot be separated from the political dynamics of the reform transition period, which reflected a compromise between the interests of the old regime and the new post-reform political forces.<sup>11</sup> *Third*, Muhammad Amin's research, which examines the existence and role of state institutions in efforts to uphold human rights.<sup>12</sup>

Unlike the three previous studies, which examined human rights from a single perspective, this study focuses on a more comprehensive examination of human rights protection institutions in Indonesia. Therefore, this study formulates two main issues that are the focus of the study. *First*, how are human rights protection institutions regulated within the Indonesian legal system. *Second*, the urgency of establishing institutions that support human rights protection and the problems encountered in carrying out their functions.

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<sup>9</sup> Ady Thea DA, "Komnas HAM: Mantan Kapolres Ngada Gunakan Relasi Kuasa Untuk Cabuli Anak 6 Tahun," *Hukum Online*, 2025, <https://www.hukumonline.com/berita/a/komnas-ham--mantan-kapolres-ngada-gunakan-relasi-kuasa-untuk-cabuli-anak-6-tahun-lt67e63d3e062ff/>.

<sup>10</sup> Laurensius Arliman S, "Komnas HAM Sebagai State Auxiliary Bodies Di Dalam Penegakan Hak Asasi Manusia Di Indonesia," *Jurnal Bina Mulia Hukum* 2, no. 40 (2017): 58, <https://doi.org/10.23920/jbmh.v2n1.5>.

<sup>11</sup> Halili Halili, "Politik Penegakan Hak Asasi Manusia Pada Masa Transisi di Indonesia," *Jurnal Civics: Media Kajian Kewarganegaraan* 13, no. 2 (2016): 207, <https://doi.org/10.21831/civics.v13i2.12744>.

<sup>12</sup> Muhammad Amin Putra, "Existence of State Institutions in the Enforcement of Human Rights in Indonesia," *Fiat Justisia Jurnal Ilmu Hukum* 9, no. 3 (2015): 256, <https://doi.org/https://doi.org/10.25041/fiatjustisia.v9no3.600>.

## **II. METHOD**

The research method used is a normative legal approach, supported by a literature review of various legal sources. There are three research approaches: legislative, case-based, and conceptual. The purpose of these approaches is to evaluate the legal basis underlying the establishment and legitimacy of institutions supporting human rights protection, as well as to link this to the importance of such institutions in addressing human rights violations that have occurred or may occur. Primary, secondary, and tertiary legal materials were collected, then processed and analysed descriptively and qualitatively to present the research results comprehensively and systematically.

## **III. ANALYSIS AND DISCUSSION**

### **a. Post-Reform Human Rights Protection Institutions**

The protection of citizens' constitutional rights is a fundamental aspect of the modern legal system. In the Indonesian context, recognition of these rights has undergone significant transformation, particularly following the constitutional reforms of 1998. The substantially amended Constitution grants a central position to human rights through more comprehensive provisions in Chapter XA. However, this normative recognition does not stand alone; rather, it requires institutional frameworks capable of ensuring effective implementation, protection, and oversight in the practice of governance.

Normatively, in the era of reform, human rights protection has been explicitly and hierarchically regulated through various formal provisions applicable in Indonesia. These regulations can be seen in the following provisions :

#### **1. Constitutional Basis for Human Rights Protection**

Before the 1945 Constitution was amended, human rights were a residue of the rulers, however, after the amendment, power became a residue of human rights themselves. Before the amendment, Chapter X of the 1945 Constitution only contained three articles on citizens, namely Articles 26, 27, and 28. After the amendment, Chapter X was renamed "Citizens and Residents," and Chapter XA on Human Rights was added, comprising Articles 28A to 28J. In addition, during the presidency of BJ Habibie, efforts to strengthen human rights were carried out through the enactment of Law No. 39 of 1999 on Human Rights, which is specifically regulated in Chapter III, divided into 10 sections.<sup>13</sup>

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<sup>13</sup> Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia," Menteri Negara Sekretaris Negara RI. Bagian Kesatu, Pasal 9 "Hak untuk Hidup", Bagian Kedua, Pasal 10 "Hak Berkeluarga dan Melanjutkan Keturunan", Bagian Ketiga, Pasal 11-16 "Hak Mengembangkan Diri", Bagian Keempat, Pasal 17-20 " Hak Memperoleh Keadilan", Bagian Kelima, Pasal 20-27 "Hak Atas Kebebasan Pribadi", Bagian Keenam, Pasal

Decision of the People's Consultative Assembly No. XVII/MPR/1998 on Human Rights served as the foundation for the establishment of Chapter XA of the 1945 Constitution of the Republic of Indonesia. This led to the enactment of Law No. 39 of 1999, which remains a binding legal reference in Indonesia to this day. These provisions emphasize the importance of protecting human rights, albeit with certain limitations. Furthermore, the human rights inherent to human beings themselves encompass various fundamental rights, including:<sup>14</sup>

- a) *Individual rights*, including freedom of expression, freedom of religion, freedom of movement, and other personal rights.
- b) *Property rights*, which are the rights to own, buy, sell, and use something.
- c) *The rights of legal equality*, is the right to be treated fairly by the law and the government.
- d) *The political rights*, namely the right to participate in government, which is realized through the right to vote and to stand for election in general elections, as well as the right to establish political parties.
- e) *The social and cultural rights*, which are rights related to the freedom to receive an education, to develop one's culture, and to various other aspects of social and cultural life.
- f) Procedural rights include fundamental rights related to the guarantee of a fair trial and adequate legal protection.

The explanation above shows that before the 1945 Constitution of the Republic of Indonesia was amended, the protection of human rights was still limited because it applied only to citizens of the Republic. However, following the amendments, the scope of the law was expanded, thereby strengthening the Constitution's focus on the fulfillment of human rights. Consequently, human rights are now recognized as inherent rights of every individual, regardless of their citizenship status.

## 2. The Legal Framework of Human Rights Protection Institutions

Past human rights violations have significantly contributed to the strengthening of legal norms. These dynamics have also led to the establishment of various human rights protection institutions outside the constitutional and general judicial systems—such as the Supreme Court and the Constitutional Court—as part of a more comprehensive process of institutionalizing human rights protection. Furthermore, the UDHR has played a crucial role in establishing a normative framework; this contribution is reflected in the incorporation of the principles contained in the declaration

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28-35 “Hak atas Rasa Aman”, Bagian Ketujuh, Pasal 36-42 “Hak atas Kesejahteraan”, Bagian Kedelapan, Pasal 43-44 “Hak Turut Serta dalam Pemerintahan”, Bagian Kesembilan, Pasal 45-51 “Hak Wanita”, Bagian Kesepuluh, Pasal 52-66 “Hak Anak”.

<sup>14</sup> Muhammad Amin Putra, “Perkembangan Muatan HAM Dalam Konstitusi Di Indonesia,” *FIAT JUSTISIA: Jurnal Ilmu Hukum* 9, no. 2 (2015): 199–216, <https://doi.org/10.25041/fiatjustisia.v9no2.597>.

into various national regulations, thereby making the values enshrined therein a reference point for the formulation of laws and regulations pertaining to human rights.

This reference is evident in MPR Decree No. XVII/MPR/1998, which cites the UDHR as a reference in the preamble under point (c); in Law No. 39 of 1999, the UDHR is cited in the preamble under point (d); and in Law No. 26 of 2000, the adoption of the UDHR is clearly stated in the first paragraph of the general explanation; as well as the citation of Article 21 of the UDHR in Constitutional Court Decision No. 011-017/PUU-I/2003, which essentially contains provisions on non-discrimination.<sup>15</sup>

Meanwhile, the legal framework for the establishment of institutions or supporting institutions for human rights protection is confirmed in the following provisions :

*First*, the Judicial Commission. This commission is regulated by Law No. 18 of 2011, which amends Law No. 22 of 2004 concerning the Judicial Commission. The institution is responsible for conducting the selection process for the appointment of ad hoc judges within the Supreme Court, aiming to enhance the competence and well-being of judges, and taking legal action and other strategic measures to uphold the integrity, dignity, and ethical conduct of judges.<sup>16</sup> In its implementation, this commission not only plays a role in protecting the human rights of each individual in society, but also performs a supervisory function over judicial institutions, which are primarily responsible for handling cases of human rights violations, thereby providing collective protection to society.

*Second*, the National Human Rights Commission. The establishment of the National Human Rights Commission is regulated by Presidential Decree No. 50 of 1993, which is subsequently outlined in Chapter VII, Articles 75-99 of Law No. 39 of 1999. Furthermore, the existence of Komnas HAM is also evident in Article 18 paragraphs (1) and (2) of Law No. 26 of 2000 concerning Human Rights Courts. This institution is mandated by law to investigate and address various forms of alleged human rights violations.<sup>17</sup> The existence of the National Human Rights Commission is essentially inseparable from the development of the international human rights protection regime, which encourages every country to establish national institutions that serve to

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<sup>15</sup> Sonya Hellen Sinombor, "Kedudukan Deklarasi Universal Hak Asasi Manusia (UDHR) Dalam Sistem Hukum Di Indonesia," *AL WASATH Jurnal Ilmu Hukum* 3, no. 1 (2022): 1–12, <https://doi.org/https://doi.org/10.47776/alwasath.v3i1.336>.

<sup>16</sup> Zaki Ulya, "Pembatalan Kewenangan Komisi Yudisial Dalam Rekrutmen Hakim Dikaitkan Dengan Konsep Independensi Hakim (Studi Putusan Mahkamah Konstitusi Nomor 43/PUU-XIII/2015)," *Mimbar Hukum* 28, no. 3 (2016): 482–496, <https://doi.org/https://doi.org/10.22146/jmh.16686>.

<sup>17</sup> Risma Sri Nurani, "Aktualisasi Peran Komisi Nasional Hak Asasi Manusia Republik Indonesia Dalam Kasus Pelanggaran Hak Asasi Manusia," *Jurnal Iman Dan Spiritualitas* 2, no. 3 (2022): 467–474, <https://doi.org/10.15575/jis.v2i3.19654>.

protect human rights.<sup>18</sup> Within the framework of international law, these institutions are known as National Human Rights Institutions (NHRIs), which derive their normative legitimacy from international standards known as the Paris Principles, adopted by the United Nations General Assembly.<sup>19</sup> In the Indonesian context, human rights protection institutions are part of the state's institutional efforts to meet these international standards.

*Third*, National Commission on Violence Against Women. The legal basis for the establishment of the Women's Commission was laid down in Presidential Decree No. 181 of 1998 on the National Commission on Violence Against Women. It was later updated and clarified by Presidential Decree No. 8 of 2024, which amended Presidential Decree No. 65 of 2005 regarding Komnas HAM. In addition, attention to women is also strengthened in Law No. 12 of 2022 concerning criminal acts of sexual violence. In fact, before the existence of these regulations, the embryo of protection for women was first regulated through Law No. 7 of 1984, which ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>20</sup> As an independent institution, the National Commission on Violence Against Women has the task of preventing violence against women through the development of strategies, public campaigns, and education and outreach on the importance of protecting women's rights.<sup>21</sup>

*Fourth*, the Indonesian Child Protection Commission. The establishment of this Commission was based on Law No. 23 of 2002 concerning child protection, which was subsequently implemented through Presidential Decree No. 77 of 2003. However, in line with the dynamics and developments in child protection needs, the government subsequently enacted Law No. 35 of 2014, amending Law No. 23 of 2002, to strengthen the legal basis for child protection in Indonesia. This Commission is designed to monitor, research, handle complaints, and advocate for the protection of children's rights.<sup>22</sup>

*Fifth*, the Indonesian Broadcasting Commission. The legal basis for its establishment is contained in Articles 7 to 12 of Law Number 32 of 2002 concerning Broadcasting. This institution is responsible for regulating,

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<sup>18</sup> Roni Sulistyanto Luhukay, "Reforming The Authority Of The National Human Right Commission From A Legal Perspective," *Jurnal Legalitas* 18, no. 2 (2025): 154-75, <https://doi.org/10.33756/jelta.v17i1.30937>.

<sup>19</sup> K.M.P Setiawan, *Promoting Human Rights: National Human Rights Commissions in Indonesia and Malaysia*, Leiden University (Leiden: Leiden University Pres, 2013).

<sup>20</sup> Stella Hita Arawinda, "Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Berbasis Gender Online Di Indonesia," *Jurnal Yustika: Media Hukum Dan Keadilan* 24, no. 02 (2022): 76-90, <https://doi.org/10.24123/yustika.v24i02.4599>.

<sup>21</sup> Nurlaili Rahmawati Sofia Lulu Azmi, Suci Az-Zahra.R, Dzikri Ramadhani Issan, "Peran Komnas Perempuan Dalam Menangani Kekerasan Seksual Terhadap Perempuan," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 4, no. 1 (2024): 44-58, <https://doi.org/https://doi.org/10.21274/legacy.2024.4.1.43-59>.

<sup>22</sup> Majolica Ocarina Fae and R Rahaditya, "Upaya Perlindungan Anak Oleh Lembaga Perlindungan Anak Indonesia Terhadap Korban Pelecehan Seksual," *Jurnal Unes Law Review* 6, no. 3 (2024): 9211-16, <https://doi.org/https://doi.org/10.31933/unesrev.v6i3>.

supervising, and ensuring that all broadcasting activities in Indonesia are conducted in accordance with the principles of democracy, justice, and diversity. This function is carried out to guarantee the public's right to obtain credible information through the broadcast media. In addition, the Indonesian Broadcasting Commission is responsible for ensuring that broadcasts do not conflict with the norms, culture, and morals of society. Article 3 also explains that the purpose of the Broadcasting Law is to 'strengthen national integration and educate the nation.'<sup>23</sup>

*Sixth*, the Business Competition Supervisory Commission. This institution is regulated in Chapter IV, Articles 30 to 37 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which aims to maintain a healthy and fair business competition climate to promote national economic efficiency and protect the public interest.<sup>24</sup> The Business Competition Supervisory Commission plays a role in preventing market domination by certain business actors and ensuring equal opportunities in economic activities, thereby creating healthy business competition.

*Seventh*, the Witness and Victim Protection Agency. The legality of this agency is explicitly regulated in Law No. 31 of 2014, an amendment to Law No. 13 of 2006 concerning Witness and Victim Protection. This revision demonstrates the government's commitment to strengthening the legal position of this agency within the national judicial system. Further provisions regarding the implementation of the duties and authorities of this institution are regulated in Presidential Regulation No. 87 of 2019. These regulations are necessary to ensure the effective implementation of the constitutional mandate of the Witness and Victim Protection Agency within the framework of human rights protection. The Witness and Victim Protection Agency is designed as an institution with a mandate to ensure the safety of witnesses and victims, both physically and psychologically, from all forms of threats, intimidation, terror, and acts of violence that any party may commit.<sup>25</sup>

*Eighth*, the General Election Commission. The institutional position of this Commission in the electoral system is explicitly regulated in the legal framework of Law No. 7 of 2017 on General Elections. This Commission was established to ensure the fulfillment of human rights in the realm of electoral

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<sup>23</sup> Mohamad Hidayat Muhtar et al., "Authorities Expansion of Indonesian Broadcasting Commission on Digital Media Supervision," *Jurnal Konstitusi* 19, no. 1 (2022): 126–148, <https://doi.org/10.31078/jk1916>.

<sup>24</sup> Muh Risnain, "The Concept of Strengthening the Authority of the Commission for Supervising Business Competition As a Quasi-Justice Institution in Building A Healthy and Adi National Economy," *Jurnal IUS Kajian Hukum Dan Keadilan* VI, no. 2 (2018): 220–234, <https://doi.org/DOI:10.29303/ius.v6i2.557>.

<sup>25</sup> Trisno R. Hadis Kadimuddin Baehaki, "Perlindungan Hukum Terhadap Saksi Dan Korban Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Media Hukum* 11, no. 1 (2023): 52–63, <https://doi.org/10.59414/jmh.v11i1.451>.

democracy. Within this framework, every citizen is given the freedom to express their political rights, both as voters and as candidates elected in general elections, while still following the administrative procedures established by the General Election Commission.

*Ninth, Ombudsman.* The implementation of duties by the ombudsman institution is based on the provisions of Article 4 of Law Number 37 of 2008 concerning the Indonesian Ombudsman, which stipulates its scope and authority. These provisions were preceded by Presidential Decree No. 44 of 2000, which laid the groundwork for the establishment of the National Ombudsman Commission as an institutional foundation. Subsequently, its existence and function were strengthened through the enactment of Law No. 25 of 2009 on public services, which emphasised its strategic role in supervising the provision of public services by state officials. The establishment of an ombudsman encourages the administration to adhere to the principles of good governance. In addition, it plays a central role as an external supervisor of public services provided by state and government agencies, both at the central and regional levels, and as a bridge between the community and the government in submitting reports or complaints regarding alleged maladministration.<sup>26</sup>

Referring to Max Weber's thinking, constitutional legitimacy granted to human rights protection institutions through the formulation of legislation reflects an institutional process that serves to affirm the basis of legitimacy while providing legal certainty for the implementation of human rights protection for society. This is because, according to Weber, one of the bases of legitimacy for the existence of institutions lies in rational-legal authority, whereby the process of institutionalization is realized through the formulation of rules that are rational and formal in nature.<sup>27</sup>

The legal framework for establishing institutions that support human rights protection demonstrates the state's consistency in developing a multisectoral and institutionalized protection system. The existence of the above-mentioned independent institutions reflects an approach to human rights protection that is not only centred on the Supreme Court and the Constitutional Court, but also involves administrative mechanisms, public oversight, and the enforcement of substantive justice. Additionally, each institution is established on a clear legal basis, with specific and complementary mandates to ensure and uphold the rights of individual citizens. This shows that human rights protection in Indonesia is not merely

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<sup>26</sup> Yusnani Hasjimzoem, "Eksistensi Ombudsman Republik Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 2 (2015): 192–207, <https://doi.org/10.25041/fiatjustisia.v8no2.303>.

<sup>27</sup> Humairah Almahdali, Helsi Zulfan Ramadani, Agustinus F. Paskalino Dadi, Deki Wibowo, dkk, *Sosiologi Politik* (Agam: Yayasan Tri Edukasi Ilmiah Redaksi, 2025).

sectoral in nature, but has become an integral part of a legal system that is responsive to the contextual needs of Indonesian society.

## **b. The Urgency of Establishing Institutions to Support Human Rights Protection and Problems in Their Implementation**

Under Indonesia's national legal system, the protection of human rights is not merely a normative obligation of the state, but also requires the existence of supporting institutions that function as implementers, monitors, and guarantors of the state's accountability in ensuring the fundamental rights of citizens. These institutions must be established, particularly to address the complexity of human rights issues that are often difficult to resolve. Based on the concept of the rule of law, the exercise of power must be grounded in the principle of legality, which holds that all state actions including those of government agencies must be supported by legal provisions to protect these rights.<sup>28</sup>

Theoretically, the rule-of-law approach, which views respect for human rights as a fundamental component, can explain the urgency of establishing such institutions. In the Indonesian context, supporting institutions represent the state's commitment to realizing comprehensive protection of human rights. The presence of these institutions is not merely symbolic but serves as a concrete manifestation of the principles of checks and balances, wherein state institutions are subject to oversight by independent bodies to prevent abuse of power and ensure the fulfillment of citizens' constitutional rights.

The establishment of these institutions raises critical questions about the urgency of their formation in Indonesia. According to the author, there are several fundamental reasons why these institutions need to be formally established as independent bodies with specific mandates granted through a legally valid framework. There are at least several reasons why this is important :

### 1. Responding to the Need for Constitutional Rights Protection

Constitutionally, the guarantee of protection for citizens' rights, as amended in the 1945 Constitution of the Republic of Indonesia, has been explicitly regulated. This guarantee can be seen in Article 28D paragraph (1):

"Everyone is entitled to recognition, guarantees, protection and fair legal certainty, as well as equal treatment before the law."

The above article indicates that the state positions itself as the guarantor of human rights for its citizens. To that end, the constitutional rights referred to above must be realised not only by relying on constitutional institutions

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<sup>28</sup> Achmad Irwan Hamzani, "Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya," *Jurnal Yustisia* 3, no. 3 (2014): 136-142, <https://doi.org/https://doi.org/10.20961/yustisia.v3i3.29562>.

such as the Supreme Court and the Constitutional Court, but also by establishing other institutions that specifically address these issues in a more focused and responsive manner.

In fact, from a constitutional perspective, the legitimacy of human rights is implicitly implied in Article 1, paragraph (3), which states that “The Republic of Indonesia is a state based on the rule of law,” since one of the characteristics of a state based on the rule of law is the requirement for guarantees of human rights.<sup>29</sup> Normatively, these guarantees are intended to ensure that human rights and fundamental freedoms, as stipulated in Chapter III, Articles 9 to 66 of Law No. 39 of 1999, which are classified into ten sections, are fulfilled comprehensively and effectively. It was this constitutional fact that prompted the government to establish institutions to protect human rights. The essence of these institutions is to ensure that constitutional rights do not merely remain as legal norms in the text of the constitution, but are also implemented in real life.

As explained by R. La Porta in Hilda Hilmiah's article, the legal protection mechanism in a country can, in principle, be categorized into two primary forms: preventive protection and repressive protection, which involves the imposition of sanctions.<sup>30</sup> In this context, the institutions above functionally have the authority to prevent human rights violations and create an environment where the rights of each individual in society are respected, such as through education, facilitation, coordination, protection, and handling complaints.

Upon closer inspection, although these institutions do not directly have the capacity to deter perpetrators of human rights violations, their functional role remains crucial in supporting the work of other institutions that legally have repressive powers. Furthermore, their existence also contributes to strengthening coordination and the effectiveness of comprehensive resolutions to human rights violations, whether through monitoring, assistance, or advocacy on behalf of victims.

Thus, normatively and institutionally, the state has formulated various legal instruments and established several institutions specifically designed to guarantee the protection of citizens' constitutional rights. These efforts represent the concrete implementation of the constitutional mandate that requires the state to respect, protect, and fulfil the fundamental rights of every individual within a democratic legal framework.

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<sup>29</sup> Yandy, Eza Tri; Masburiyah, Sulaeman, Anggi Purna Harahap, M. Yusuf “Konsep Ulul Albab Dan Relevansinya Terhadap Prinsip-Prinsip Negara Hukum Di Indonesia Sulaeman Anggi Purnama Harahap,” *Jurnal El-Thawalib* 6, no. 1 (2025): 112–26, <https://doi.org/https://doi.org/10.24952/el-thawalib.v6i1.14861>.

<sup>30</sup> Hilda Hilmiah Dimiyati, “Perlindungan Hukum Bagi Investor Dalam Pasar Modal,” *Jurnal Cita Hukum* II, no. 2 (2014): 6–22, <https://doi.org/10.15408/jch.v1i2.1473>.

## 2. Response to Contextual Needs

As time progresses, crimes against human rights have become increasingly complex and diversified. Crimes against human rights are no longer limited to conventional physical acts, but have evolved to include various new modes that are more covert and systematic. This development calls for human rights protection mechanisms that are more adaptable to evolving crime patterns. Thus, establishing institutions to support the protection of human rights is the most effective solution for addressing specific cases that arise.

Furthermore, the contextual needs referred to include issues that occur within society, such as high rates of crime against vulnerable groups (women, children, the poor, and the elderly), people with disabilities, abuse of power by state officials, and efforts to fulfil democratic rights in an inclusive manner that covers marginalised indigenous communities, such as the Anak Dalam tribe, which the government has often overlooked.

## 3. Implementation of International Obligations

In its position as part of a global community that upholds the principles of human rights, it guarantees the protection, respect, and fulfillment of the fundamental rights of every citizen. Indonesia has demonstrated its commitment through the ratification of various international legal instruments, such as the *ICCPR*, *CRC*, and the *CEDAW*. This ratification creates a legal obligation for the state to take solution-oriented measures to guarantee the protection of human rights in Indonesia, such as establishing institutions outside of existing constitutional institutions.

The international obligations referred to are agreements resulting from international forums covering human rights. The implementation of these agreements begins with ratification, which then serves as the basis for establishing special institutions with more specific and concrete powers. The author presents ratification as follows :

*First*, Law No. 12 of 2005 is the result of an international agreement on civil rights, known internationally as the *ICCPR*. One of the concerns of the *ICCPR* that makes it essential to ratify is that the *ICCPR* explicitly declares that freedom of religion is a prerogative right granted to citizens, as stipulated in Article 18 paragraphs (1) to (4) of the *ICCPR*. In fact, long before Indonesia ratified the *ICCPR*, the recognition and protection of freedom of religion and belief had been explicitly regulated in the 1945 Constitution of the Republic of Indonesia, specifically in Articles 28E and 29. This regulation was then reinforced by the provisions of Article 22 of Law No. 28 of 1999.<sup>31</sup> This reality underscores the state's commitment to upholding human rights.

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<sup>31</sup> Muhammad Iqbal Yunazwardi and Aulia Nabila, "Implementasi Norma Internasional Mengenai Kebebasan Beragama Dan Berkeyakinan Di Indonesia," *Indonesian Perspective* 6, no. 1 (2021): 1-21, <https://doi.org/10.14710/ip.v6i1.37510>.

Furthermore, another equally important reason why the *ICCPR* needs to be ratified is the prohibition of torture as stipulated in Article 7 of the *ICCPR*, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." This prohibition is also in line with Article 30, paragraph 6 of Law No. 39 of 1999 and Article 28A of the Constitution, which states that every person has the right to life and the right to defend their life and livelihood.

In the Indonesian context, the existence of Komnas HAM plays a crucial role in ensuring the fulfillment of the principles referred to in the *ICCPR*. Thus, Komnas HAM serves as a state instrument in articulating the commitment to international human rights standards at the national level.

*Secondly*, Presidential Decree No. 36 of 1990 concerning the Convention on the Rights of the Child (CRC) is a concrete manifestation of Indonesia's commitment to international norms in the field of children's rights. The United Nations adopted this instrument and has established it as a global standard for the protection and fulfillment of specific children's rights. The ratification demonstrates that Indonesia has explicitly declared its intention to adopt the principles of the *CRC*, thereby strengthening Indonesia's legal norms.

The commitment to strengthen protection as stipulated in the *CRC*, ratified by Indonesia and comprehensively outlined in 16 articles in Law No. 39 of 1999, consisting of Articles 52 to 66, was reaffirmed in Law No. 35 of 2014, which specifically regulates the protection of children.<sup>32</sup> Meanwhile, the *CRC* consists of 54 articles, which, in summary, are oriented towards establishing universal standards regarding the treatment of children, recognising that children have specific rights that the state, family, and society must guarantee.

It also aims to protect children's rights holistically, ensure the best interests of children, encourage their participation in matters affecting their lives, and affirm the state's responsibility to ensure the fulfillment, protection, and respect of children's rights through policies, legislation, and administrative measures. Thus, Indonesia has made the Indonesian Child Protection Commission the front line in child protection.

*Third*, the adoption of *CEDAW* by the international community encouraged Indonesia to demonstrate its commitment to eliminating discrimination against women. This response was realised through a ratification process that was officially enshrined in Law No. 7 of 1984, making *CEDAW* part of the legal system and legally binding for the state. Ratification is essential because various international legal instruments explicitly state that women are categorised as a vulnerable group. This classification is based

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<sup>32</sup> Syofirman Syofyan Didi Nazmi, "Pengaturan Perlindungan Hak Anak Di Indonesia Dalam Rangka Mengeliminir Pelanggaran Hak Anak," *UNES Journal of Swara Justisia* 7, no. 2 (2023): 774–84, <https://doi.org/10.31933/ujsj.v7i2.380>.

on the assumption that women are often in a weak position, both socially and structurally. This condition makes them more at risk of experiencing various forms of threats, such as violence from individuals or other groups in society.<sup>33</sup>

Broadly speaking, the results of the Convention on the Elimination of All Forms of Discrimination against Women are in line with Indonesian legal principles, namely: the desire for equality not only in terms of norms, but also in practice, and the prohibition of gender-based discrimination, both implicit and explicit, in all aspects of life, such as politics, education, and employment, as stipulated in Article 27 paragraph (1) of the 1945 Constitution "All citizens shall be equal before the law and government and shall be required to uphold the law and government without exception."

To that end, to achieve international goals that call for the elimination of gender-based discrimination, the establishment of Komnas Perempuan in 1998 as a State Auxiliary Body became an important milestone, strengthening the state's commitment to protecting women's rights from various forms of violence and discrimination.

However, in terms of implementation, the execution of the functions and authorities of institutions supporting human rights protection still faces various problems. *First*, overlapping authorities,<sup>34</sup> For example, in handling severe human rights cases, Komnas HAM has the authority to investigate violations that have occurred. However, the results of the investigation are only "*pro justitia*" and are handed over to the Attorney General's Office for investigation. Overlap occurs when the Attorney General's Office rejects or fails to follow up on the results of Komnas HAM's investigation, as seen in the Trisakti and Semanggi tragedies. *Second*, institutional aspects, including limited human resources and inadequate budgetary support. *Third*, sociological aspects, such as low public awareness of the existence and functions of institutions, make many victims of human rights violations reluctant or unaware of the procedures for accessing protection.

In summary, the legitimacy model of institutions supporting human rights protection in Indonesia, along with the various challenges they face in carrying out their functions, can be seen in the following table:

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<sup>33</sup> Nurjannah Abdullah and Muhammad Fajhriyadi Hastira, "Perbandingan Implementasi The Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) Dalam Pemenuhan Hak Politik Dan Ekonomi Perempuan Di Arab Saudi Dan India," *Hasanuddin Journal of International Affairs* 3, no. 1 (2023): 68–87, <https://doi.org/https://doi.org/10.31947/hjirs.v3i01.25646>.

<sup>34</sup> Dani Muhtada and Ayon Diniyanto, "Penataan Regulasi Di Indonesia Melalui Lembaga Independen," *Pandecta: Research Law Journal* 16, no. 2 (2021): 278–290, <https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i2.31866>.

Table 1. Legitimacy Models and Implementation Challenges

	<b>Normative Legitimacy</b>	<b>Functional Legitimacy</b>	<b>Implementation Challenges</b>
Human Rights Protection Support Institutions	<ul style="list-style-type: none"> <li>➤ CHAPTER XA Articles 28A-28J of the 1945 Constitution of the Republic of Indonesia.</li> <li>➤ Of the nine institutions supporting human rights protection, each has a different level of normative legitimacy. Eight institutions derive their legitimacy from legislation, while one institution derives its legitimacy from a presidential regulation.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Institutional integrity, consistency, and independence.</li> <li>➤ Has the capacity to monitor, investigate, and resolve concrete complaints from the public.</li> <li>➤ Being at the forefront in responding to potential human rights violations and the loss of citizens' constitutional rights.</li> <li>➤ Providing community assistance.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Overlapping authorities.</li> <li>➤ Limited authority to follow up on recommendations issued.</li> <li>➤ Limited human resources and budget.</li> <li>➤ Limited institutional existence.</li> <li>➤ Low public awareness of the existence of these institutions.</li> </ul>

The description and table above lead to the conclusion that the establishment of institutions supporting human rights protection is essential in developing an effective and fair human rights protection system. However, in practice, this needs to be accompanied by systematic efforts to ensure that the role of these supporting institutions does not become merely a formality, but is truly capable of performing a substantive function in guaranteeing the fulfillment, protection, and enforcement of human rights.

#### IV. CONCLUSION

Based on the explanation outlined above, it can be concluded that, normatively and institutionally, the regulation of human rights protection in Indonesia is already very comprehensive and structured. First, the normative framework for guaranteeing human rights protection can be seen in Articles 28A to 28J of the 1945 Constitution of the Republic of Indonesia, Decree of the People's Consultative Assembly Number XVII/MPR/1998, and Law Number 39 of 1999. Furthermore, the authority to guarantee these rights is also mandated to nine institutions in addition to the authority given to the Supreme Court and the Constitutional Court. Second, the urgency of establishing institutions to support human rights protection is due to three things, namely, responding to the need for constitutional rights protection, responding to contextual needs, and implementing international obligations. Meanwhile, the obstacles in its implementation lie in three aspects, namely overlapping authority, limited resources, and sociological aspects.

To meet the needs of these institutions in carrying out their functions, the author recommends the following strategic steps: *First*, strengthen the authority of human rights protection institutions by emphasizing the normative consequences of any form of disregard for the recommendations produced, so that the effectiveness of human rights monitoring and protection can be better guaranteed. *Second*, it is necessary to design a model for coordination between institutions that have overlapping authorities in the performance of their duties, in order to prevent overlapping of authority. This effort can be realized through more comprehensive regulations in the form of Government Regulations or Presidential Regulations as legal instruments that regulate institutional coordination mechanisms in a more systematic manner. *Third*, the state must provide financial support to these institutions to strengthen their institutional capacity, both through the development of institutional resources and the improvement of human resource competencies relevant to the needs of implementing institutional tasks and functions.

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