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THE EXISTENCE OF HUMAN RIGHTS IN A SHIFT IN THE CONCEPT OF THE STATE OF LAW

Imran Siswadi.[1] Supriadi.[2]
Universitas Teknologi Sumbawa
Jl. Raya Olat Maras Batu Alang, Pernek, Kec. Moyo Hulu, Kabupaten Sumbawa, Nusa Tenggara Barat. Indonesia.
E-mail: imransiswadi24@gmail.com

ABSTRACT
Human rights have become an essential element in international politics, especially after the end of the Cold War in the 1990s. The problem in this research is "How the existence of human rights in the shifting concept of the state of law and human rights enforcement in Indonesia." The study of normative law tries to analyze, investigate, and explain the basics and political position backgrounds of human right in the history of the human rights development. The research results show that there are at least three main themes often highlighted by human rights violations in Indonesia. The fact that government actions that violate the principles of constitutionalism, especially violating human rights, can always be formally justified constitutionally because they are given legal clothing in the form of laws or other laws and regulations has caused a shift in principles and concepts from a states of law that happens a lot in Indonesia, namely, the change of the states of laws into a state of laws that lays down laws created by the government as a measure of truth. The government generally uses accusations of undermining government authority against those who are considered contrary to government policy.

Keywords: Human Rights. Politics**.** State of Law.

1. Introduction

In today's era, two things are of international concern: how to build so we do not damage the environment. This means creating a suitable living environment in building or creating sustainable development policies. The second is enforcing human rights, where all countries in the world are expected to be able to enforce human rights in the nation and state as well as in political, social and social life. All this makes human rights an essential element in international politics. So important is the meaning of human rights, making major countries make it a political issue to pressure developing countries.

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Human rights have now become an essential element in international politics, especially after the end of the Cold War in the 1990s[2]. Relations between the countries after the war were increasingly open because the bloc that diametrically confronted the United States as a representation of the West and the Soviet Union (before it broke up into Russia) as a representative of the East has been realized to be a severe obstacle factor for the process of accelerating the achievement of progress in respect for universal human values. That is why, in the Cold War era, human rights seemed way in place; there was not much that could be done by the United Nations or bangs anywhere in the world because it would be absurd when faced with the actions of two superpowers and their allies in conducting an arms race and propaganda.

As an essential element in the international political arena, human rights are not a new issue because, since the 10th century during the Greek-Roman period, the idea of human rights emerged in the early 13th century as contained in the document Magna Charta (1215), and then also found in the Petition of Rights (1628). Nevertheless, human rights thinking was initially related to the doctrine of natural law that man naturally bears a set of natural rights that are eternal and inalienable, abandoned and diminished by the demands of divine rights. Early in its development, natural law doctrine taught more about the obligatory side and overrode the central idea of human rights that emphasized equality and independence.[3]. Struggle after struggle continues to uphold human rights on this earth, and the long struggle of the human rights movement dates back decades.

The history of the struggle to defend the rights of humanity may be as long as humanity itself. We already know about the significant emerging religions, such as the religions of Samawai and Buddhism, and their struggle to defend the rights of humanity. The prophet Moses tried to save his people

[2] Lukman Hakim, Nalom Kurniawan. *Developing Paradigm of Indonesian Human Rights Law Based on Human Rights Obligation*, Jurnal Konstitusi, Vol. 18 No. 4 November Tahun 2021.

[3] Adnan Buyung Nasution, *The Aspiration for Constitusional Government in Indonesia, a Social-Legal Study of the Indonesia Konstituante 1956-1958,* Jakarta : Pustaka Sinar Harapan.

from Pharaoh's oppression and persecution. 'Isa taught love for one's neighbour, echoing with the words "love thy neighbour as thou hast loved thyself". Islam teaches mercy as a fundamental human value and one of the fundamental virtues for self-professed Muslims.[4].

The state of the law is where the rulers or government, as state administrators, carry out state duties related to applicable legal regulations. According to Muhammad Yamin, the state of the law is a state that runs a government that does not according to the will of those who hold power but according to written rules made by representative bodies of the people that are formed legally, by the principle of "the laws and not men shall govern". A state of law is a State in which the actions of its ruler must be limited by applicable law.[5].

The rule of law comes from the teaching of the rule of law, the understanding of the rule of law as a state where the instruments of the state are subject to the rule of law. The state of the law is where the fate and independence of the people are best guaranteed by law.[6].

From the understanding of some of these experts, all emphasized the ruler's submission to the law as the essence of the rule of law. The essence of such a state of law focuses on the submission of state power holders to the rule of law.

The relationship between the rule of law and human rights cannot be separated. One of the characteristics of the rule of law is the existence of protection of human rights. Within the country's law, human rights are protected; if human rights are not protected within a state, the country is not a state of law but a dictatorship with a very authoritarian government. Protection of human rights in the rule of law manifested in the form of norming such

[4] Farid Wajdi, Imran Imran. *Pelanggaran Hak Asasi Manusia Dan Tanggung Jawab Negara Terhadap Korban*, Jurnal Yudisial, Vol. 14 No. 2, Februari 2022.

[5] Alifiyah Fitrah Rahmadhani. *Dodi Jaya Wardana. Penyelesaian Pelanggaran HAM Berat Di Indonesia*, Unes Law Review, Vol. 6 No. 1 September 2023.

[6] Enju Juanda. *Eksistensi Hak Asasi Manusia dan Alternatif Penyelesaian Atas Pelanggarannya Dalam Negara Hukum Republik Indonesia*, Galuh Justisi, Vol 8, No 1 Maret 2020.

rights in the constitution and statutes and henceforth its enforcement through judicial bodies executors of judicial power.

The relationship of the rule of law with human rights can be studied from the point of view of democracy; the cause of human rights and democracy is a conception of humanity and social relations born from the history of human civilization worldwide. Human rights and democracy can also be interpreted as a result of the human struggle to defend and achieve humanity because, until now, only the conception of human rights and democracy has been proven to be most recognized and guarantee the dignity of humanity.

A consequential provision in the Basic Law has guaranteed human rights provision. Most of the material of this fundamental law comes from the formulation of a previously passed law, namely Law Number. 39 of 1999 on human rights. Terms that provide constitutional guarantees of human rights are very important and even considered the main characteristic of adhering to a country's state law principle. In addition to human rights, it must also be understood that everyone has fundamental obligations and responsibilities.

The relationship between the rule of law and human rights is not just in formal form, in the sense that the protection of human rights constitutes The main feature of the concept of the rule of law. However, the relationship is also materially visible. This material relationship is described With the attitude of action; the state organizer must rely on The rule of law as the principle of legality. It aims to protect human rights. In addition, free judicial power and independence, without being influenced by any power, is a form of protection and respect for rights human rights in the rule of law.

The term Rechsstaat was first used by Rudolf Von Gneist, professor of the University of Berlin, in a book entitled "Das Englische Verwaltungserecht", 1857. In terms of development, the concept of Rechtsstaat has Developed from a class concept towards a modern concept[7].

[7] Bermen Harold J., 1999, *Law and Revolution; The Formation of the Western Legal Tradition*, Cambridge; Harvard University Press.

The characteristics of the classical rechtsstaat (formal rechtsstaat), according to Friederich Julius Stahl, include;

1.1. The recognition of rights primary man;
1.2. The existence of a division of powers;
1.3. Governance based on regulations (wetmatigheid vanbestuur);
1.4. The presence of the state administrative court.

Liberal principles and democratic principles include;

1.1. The separation between state and civil society, the separation between public interest and individual particular interest, the separation between public law and private law;
1.2. Separation of the state from the church;
1.3. The existence of guarantees for civil liberties rights;
1.4. Equality to the act;
1.5. The existence of a written constitution as the basis of state power and the basis of the legal system;
1.6. Separation of powers based on trias politica and the "checks and balances" system;
1.7. The principle of legality;
1.8. Ideas about the government apparatus and judicial power impartial and neutral;
1.9. Principles of legal protection for the people against the ruler by a free judiciary and impartial and in conjunction with these principles laid the principle of juridical state responsibility;
1.10. The principle of division of powers, both territorial in nature and vertical (federated and decentralized systems).[8]

Along with these liberal principles, the principles of democracy underpinning the rechtsstaat, namely;

1.1. The principle of rights politics;
1.2. The principle of majority;

[8] CF. Strong. 1952, *Modern Political Constitution; An Introduction to the Comparative Study of Their History and Existing From.* London; Sidgwick & Jackson Ltd.

1.3. The principle of representation;

1.4. Principles accountability;

1.5. Public principles (openbaarheids beginsel).

Based on liberal principles, the democratic then rechtsstaat has features. The principal is;

1.1. The existence of a law Basis or constitution that Loading Conditions Written about the relationship between the ruler and the people;

1.2. The existence of division authority country that Includes authority Maker ACT that exists In parliament, the judicial powers are free to not only deal with disputes between individuals and people but also between the ruler and the people and the government that bases its actions on the Act;

1.3. Recognized and protected people's right to freedom (vrijheidsrechten van de burger)[9].

The characteristics of the rechsstaat are;

1.1. Limitation of state power to individuals, the restriction is carried out by law;

1.2. Violations individual rights should only be based on the rule of law (principle of legality);

1.3. The protection of human rights (natural rights);

1.4. The existence of a division of powers;

1.5. Judicial bodies that are not favoring.

Applicable laws and regulations shall not be unilaterally determined and applied by and only in the ruler's interests, contrary to democratic principles. The law is not intended Only for the benefit of a few in power; the law must ensure the interests of a sense of fairness for all people without exception. So, the state of law (rechtsstaat) was developed not as an 'absolute rechsstaat' but a 'democratische rechtsstaat' or democratic state of law. Every country's

[9] Donnely Jack, *Human rights and Development; Complementary or Competing Concerns.*

democratic laws must guarantee democracy, as every country's democracy must be guaranteed. Its administration is based on the law.[10].

2. Reseach Method

The normative juridical method is applied to this study. It indicates that this approach is based on literature studies, meaning that issues observed from the perspective of legal rules are examined in addition to secondary data or literature reviews. The study of normative law tries to analyze, investigate, and explain the basics and political position backgrounds of human rights in the history of human rights development.[11].

3. Results and Discussion

3.1. The Existence of Human Rights in a Shift in the Concept of the State of Law

Human rights are rights that belong to humans solely because he is human. Humanity has it not because it was given to him by society or by positive law but rather solely based on his dignity as a human being. In this sense, then, even though everyone is born with skin colour, gender, Different languages, cultures and nationalities, he still has such rights. This is the universal nature of such rights. In addition to being universal, those rights are also inalienable. The meaning is as bad as whatever treatment a person has endured or however cruel he may be. The treatment of a person will not cease to be human and, therefore, retain these rights. In other words, those rights are inherent in himself as a human being.[12]

[10] Edward S. Corwin dan JW Peltason, 1967, *Understanding the Constitution*, New York Chicago, San Fransisco, Tronto, London; Rinehart and Wilson Inc.

[11] Jhoni Ibrahim, (2022). *Metode Penelitian Hukum Normatif dan Epiris*, Jakarta; Gramedia.

[12]Jack Donnely, 1999. *Universal Human Rights in Theory and Practice, Cornell University Press*, Ithaca and London.

The origins of the idea of human rights, as described above, are derived from the theory of natural rights (Natural Rights Theory). Natural theory Regarding rights starts from the theory of natural law (natural law theory); the latter can be traced back to ancient times with Stoic philosophy to modern times through the written writing of natural law of Saint Thomas Aquinas. Hugo de Groot – a Dutch jurist named the "father of international law", better known by its Latin name, Grotius, developed Aquinas' theory of natural law by breaking its origins theistic and making it a product of rational, secular thought. On this basis, then, in subsequent developments, one of the educated post-Renaissance, John Locke, asked about the Theory of Natural Rights.[13].

In his book that has become a classic, "The Second Treatise of Civil Government and a Letter Concerning Toleration" Locke filed A postulation of the thought that all individuals are endowed by the realm of rights inherent in life, liberty and possession, which is the property they are alone and cannot be revoked or stripped down by the state. Through a 'social contract', the protection of rights that cannot be repealed is left to the state. However, according to Locke, when The ruler of the state ignores the social contract by violating rights of an individual nature, then the people of that country are free to bring down the ruler and replace him with a government willing to respect such rights. Through this theory of natural rights, the existence of rights Individuals who are pre-positive receive strong recognition.[14].

From here begins the internationalization of the idea of human rights. Since then, the international community has agreed to make human rights man as "a measure of common achievement for all peoples and "a common standard of achievement for all peoples and all nations". It is characterized by its acceptance by the international community an

[13] John Locke, *The Second Treatise of Civil Government and a Letter Concerning Toleration*, New Book, disunting oleh J.W. Gough, Blackwell, Oxford, 1999.

[14] Edmund Burke, *Reflection on the Revolution in France*, ed. Conor Cruise O'Brien, London, 1999.

international human rights legal regime established by the United Nations or what became better known as the "International Bill of Humans." Rights".

The natural rights theory has established a legal system superior to a country's national law and human rights norms. Nevertheless, its emergence as an international norm that applies to each country makes it no longer entirely the same as its initial concept of natural rights. The substance of the rights contained In it has also gone far beyond the substance of the rights contained in natural rights (as John Locke proposed). Content rights The present idea of human rights is not just limited to civil and political rights but also includes economic, social, and cultural rights. Even recently, its substance has increased with the advent of rights "new", the so-called "solidarity rights". In this context, the meaning of human rights should be understood today.

The concept of the rule of law in each country is very different. The concept of the rule of law in Continental Europe was called rechtsstaat, and this model was applied in the Netherlands, Germany, and France. The idea of the rule of law in the West began in the time of Plato with the concept "that the administration of a good state is based on suitable arrangements (laws) he called Nomoi.[15].

Then, the idea of the rule of law or rechsstaats became popular in the 17th century due to the sociopolitical situation in Europe, which was dominated by absolutism. Two Western scholars who contributed to the thought of the rule of law, Immanuel Kant and Friedrich Julius Sthal, have expressed their ideas. Kant understood the rule of law as Nachtwaker staat or Nachtwachterstaats (night watch state), whose job was to ensure public order and security. Kant's concept of the rule of law is called the liberal state of law.[16].

[15] Rudi Rizki et al, *Draft Unsur-Unsur Pertanggungjawaban Komando, The Asia Foundation & ELSAM*, Jakarta, 2019.

[16] Nico Keijzer, *Freedom of the Press and its Limitation, Refreshing Course of Criminal Law "Same Root Different Development"*, Bandung 19-21 April 2019.

As a state of law, Indonesia means that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law and all products of legislation and derivatives that apply in the territory of the Unitary State of the Republic of Indonesia.

In this case, Indonesia, as a state of law, must be able to enforce laws that apply fairly and equitably to all its citizens. In addition, Indonesia, as a state of law, must also be able to meet the demands of reason and legitimize democracy.

In realizing Indonesia as a state of good and correct law in regulating everything in the country, the participation of citizens who obey and live the applicable laws obediently is essential. Because law is an order or rule that the people in a country must uphold.

The meaning of Indonesia as a state of law includes several important aspects that underlie the legal system and the order of life of the nation and state of Indonesia. The following are some meanings of Indonesia as a state of law :

3.1.1. The Existence of Binding Law.

As a state of law, Indonesia has a binding force that all citizens and government must obey. The law becomes the basis for actions and decisions taken by individuals, groups, institutions, and governments. No power or authority is above the law.

3.1.2. Principle of Rule of Law.

This indicates that the law applies equally to all individuals and institutions, including governments. No person or institution is exempt from liability or acts outside the limits of the law. The principle of the rule of law guarantees fair treatment, impartial law enforcement, and legal certainty for all citizens.

3.1.3. Protection of Rights and Freedoms.

As a state of law, Indonesia recognizes and protects human rights and individual freedoms guaranteed by the constitution and legislation. These rights include the right to life, freedom of expression, the right to religion, the right to opinion, the right to own property, and so on. The law provides the foundation for protecting these rights and guarantees that everyone can live with dignity and without discrimination.

3.1.4. Legal Certainty.

Indonesia, as a state of law, also means legal certainty. Laws must be clear, accessible, and applied consistently. All citizens should be able to know their rights and obligations, as well as the legal consequences of their actions. Legal certainty provides a stable basis for individuals, businesses, and investments to operate.

3.1.5. Law Enforcement and Justice.

The rule of law guarantees effective and fair law enforcement. The law must be applied consistently and impartially to anyone, without political intervention or personal interests. An independent and transparent judicial system plays a role in ensuring fairness and resolving disputes fairly.

3.1.6. Government Responsibility.

As a state of law, Indonesia places the government as the holder of power responsible for carrying out its duties and authority by the law. The government is expected to carry out its duties with justice, integrity, and accountability principles.

To find answers from a legal, political point of view to the problems of massive human rights violations that often arise in Indonesia, it is necessary to look at the response or disclosure of the Indonesian constitution or socio-legal and cultural messages and essential coverage of constitutionalism.

The fact that human rights violations are rife, especially during the enactment of the 1945 constitution, has raised questions about the constitution's stance on human rights. The 1945 constitution did not pay much attention to human rights. Some even say that the 1945 constitution does not talk about human rights except in two respects, namely the second precept of Pancasila, which lays down the principle of "just and civilized humanity", and article 29 of the 1945 constitution, which derives the principle of freedom of every citizen to profess religion and worship.

The idea of protecting people's rights in the 1945 Constitution is more of a container of the idea of citizens' human rights, which is a particularistic acceptance of human rights. The term particularistic human rights is usually interpreted as human rights whose acceptance and implementation must be adapted to the special conditions of Indonesia, not simply accepted as a ready-made concept. It is even said that the first paragraph of the Preamble to the 1945 Constitution, which states that independence is the right of all nations, can still be considered particularistic because the statement is only used as a reason for independence for the Indonesian nation and does not support for the idea of universal human rights. Other articles considered as guarantees of protection for human rights, such as Article 27 and Article 28 of the 1945 Constitution, are more recognition of the particular human rights of citizens. Even in the constitution, it is still said to be regulated by law, which means breaking the constitution as a residual function of citizens' human rights and state power.

The fact that government actions that violate the principles of constitutionalism, especially violating human rights, can always be formally justified constitutionally because they are given legal clothing in the form of laws or other laws and regulations has caused a shift in principles and concepts from a state of law to a state of law that happens a lot in Indonesia, namely the change of the state of law into a state of law that lays down laws created by the government as a measure of truth. In such a state of law, the measures of truth are no longer a sense of justice and propriety with a high ethical spirit but sentences of laws made through engineering for the benefit of the government.[17].

In the rule of law, any unjust government action is justified by lawmaking through attribution of authority, so the law is placed as a justification tool with a "positivist-instrumentalist" character. A law of a positivist-instrumentalistic character is a law that is used as an instrument to justify what the ruler will or has done." By itself, the legitimacy possessed by the government in exercising power is also more formal legitimacy or legitimacy full of contradictions for violations and contradictions in Indonesia become inevitable because, in a regime whose legitimacy is just a formality, it is full of contradictions and opens up the parliament for various crises to occur[18].

In addition, although the Indonesian state already has a written constitution of the 1945 Constitution, the historical record of political and legal travel has provoked questions about the existence or absence of constitutional government in Indonesia. Such a question arises because, in the correct sense, constitutional government is not because the government is based on the constitution or is not measured by the presence or absence of a constitution in the country concerned but must first be measured from the presence or absence of the essence of

[17] Agus Sobarnapraja. *Penegakan Hukum Pelanggaran Hak Asasi Manusia di Indonesia*, Jurnal Ilmu Kepolisian, Vol. 14 No. 1 April 2020.

[18] Kadek Yopi Sri Wahyuni. *Tinjauan Htukum Internasional Terhadap Terjadinya Pelanggaran Ham Di Indonesia*, Jurnal Locus Delicti, Vol. 3 No. 1, April 2022.

constitutionalism in the constitution or the 1945 Law used to then measure its implementation in government practice.[19].

A government based on the constitution but whose constitution does not contain the essence of constitutionalism in the sense that it does not guarantee the protection of human rights through a balanced and democratic distribution of power is not a constitutional government." A country with a constitution allowing for an undemocratic political system through unilateral interpretations by the ruler is not a constitutional government. So even though the government has carried out its duties by the existing constitution, if the existing constitution is not in line with constitutionalism, then it is not a constitutional government. Thus, a state that officially has a constitution does not necessarily give birth to a constitutional government.[20].

3.2. Upholding Human Rights in Indonesia: A Necessity

Among thousands of cases of human rights violations that occurred from the 1960s to 1990s, there are at least three main themes often highlighted by human rights violations in Indonesia. First, violent acts carried out by state officials often occur in certain areas for security reasons. For example, in the case of human rights violations in the (former) province of East Timor in the provinces of Papua and Aceh, the colour of military violence (through the implementation of the Military Operation Area) against the civilian population is very thick. Usually, the excuse used by the government (Tentara Nasional Indonesia) to avoid or legitimize other forms of human rights violations is that there is a threat

[19] Jagad Aditya Dewantara, T Heru Nurgiansah, Fazli Rachman. *Mengatasi Pelanggaran Hak Asasi Manusia dengan Model Sekolah Ramah HAM*, Jurnal Ilmu Pendidikan, Vol. 3 No. 2 Tahun 2021.

[20] Moch. Choirul Rizal. *Perlindungan Hukum Terhadap Pembela Hak Asasi Manusia Perspektif Teori Alasan Penghapus Pidana*, Arena Hukum (Jurnal Ilmu Hukum), Vol. 16 No. 1 April 2023.

from the local population to the security of investment areas (such as Papua and Aceh).[21]

In addition to human rights violations that occur within the framework of security/ territorial integrity disturbances, human rights violations committed by government officials are often in contact with subversive accusations; on the other hand, the government generally uses accusations of undermining government authority against those who are considered contrary to government policy. The actual forms of human rights violations in this category generally vary, and arbitrary arrests to disappearances of life, either through kidnapping or torture and even shootings suspected to be carried out by the authorities (for example, in the case of student demonstrations at Trisakti University, Semanggi Bridge and Atmajaya Catholic University in 1989).[22]

Second, human rights violations that occur as access to collusion between government officials and businesses, in general, affect the mining, forestry and industrial sectors, forced eviction of land to be used as new industrial land, exclusion of local and customary rights of communities around forest concession rights areas in Kalimantan, Sumatra, Sulawesi and Papua, and oppression of workers are forms of budgets that are full of collusive relations between government officials and business people. Of course, the entrepreneurs referred to in this context are foreign entrepreneurs, especially those from developed countries.

Third, human rights violations are often committed by individuals/mass groups against other individuals/mass groups, generally occurring in riots and horizontal conflicts. Incidents of mass violence occurred in West Kalimantan and South Kalimantan, known as the May

[21] Wahyu Wibowo, Yusuf Setyadi. *Penegakan Hukum Hak Asasi Manusia Di Indonesia Dalam Kasus Pelanggaran Ham Berat: Studi Kasus Tanjung Priok, Timor Timor, Dan Abepura*, Journal Of Islamic And Law Studies, Vol. 5, No. 1, 2021.

[22] Landry Haryo Subianto. *Prsepektif HAM Dalam Diplomasi RI; Tantangan dan Peluang bagi pemerintahan Abdurahman Wahid*, Jurnal Analisis CIS, XXIX/2000, No. 4, hlm 146.

23 case or the Gray Friday incident" and the last case in Central Kalimantan (including Sampit). Events in Ambon and the Malukan islands (which most perceive as a conflict between Muslims and Christians), as well as in post-poll East Timor, constitute a small part of horizontal conflicts between tribes/ethnicities, races, and religions/groups, which gave impetus to a series of alarming human rights violations.

Indonesia has only formally recognized these human rights values in the second amendment to the constitution, or practically not so long ago. It is certain that previously, the existing legislation in Indonesia had not accommodated human rights values, and during that time, we were faced with problems of human rights violations everywhere. Such as legislation in the field of mining (Law No. l1/1967), legislation in the field of forestry for example (Law No. 40/1999), which does not seem to accommodate the interests of indigenous peoples, where their forests are cleared, and their customs are destroyed due to the absence of human rights protection for indigenous peoples, as well as many more laws that reflect the unaccommodated protection of community rights.

Entering the 21st century, Indonesia faces various kinds of problems and difficulties, both qualitative and quantitative. Disturbing, disturbing, and condemning problems arose amid the Indonesian nation's failure to build the economy to improve the welfare of people's lives, and the issue of upholding and protecting human rights came aggressively hitting Indonesia.

Indonesia is one of the countries with a red record by the United Nations on enforcing and protecting human rights. The wrong impression of the enforcement and protection of human rights has been going on for a long time. However, it has become more actual and the talk of the world since the case of Tanjung Priok, Military Operation Area in Aceh, Marsinah assassination, Bernas Journalist (Udin) Murder, raid of Partai Demokrasi Indonesia Central Leadership Council office, kidnapping of

students, after polls in East Timor and finally Atambua which had seized the energy and minds of all components of this nation, even the United States threatened to carry out a economic embargo through its lobbying power with the United Nations.

Academically, it can be said that the reform era cannot be concluded whether it has upheld and protected human rights or not because it has only been running for a relatively short time and is in the stage of improving the life of the state and nation that has collapsed by the New Order government.

During the reign of BJ Habibie, a political policy was born through the Decree of the People's Consultative Assembly Number. XVII/MPR1999 on human rights, followed by Law Number. 39/1999. With a relatively short period, it is impossible (approximately 17 months) that there will be significant changes in BJ's leadership. Habibie. The government is very preoccupied with the rampant demands of the people and demonstrations almost every day. The nation's integrity was threatened by the many provinces demanding independence. Finally, East Timor divorced from the motherland of Indonesia. Sharing the consequences and not gaining the legitimacy of the people, Habibie's leadership finally ended through the denial of his responsibility.

Then, through the general assembly of the People's Consultative Assembly in 1999, the country's leadership was transferred to Abdurrahman Wahid and Megawati Soekarno Putri as president and vice president, respectively. It is not much different from the era of Habibie during the leadership of Abdurrahman Wahid because there has been no significant breakthrough in upholding human rights, especially in resolving cases of human rights violations; even more widespread human rights violations occur. Consider the case in Sampit, Central Kalimantan, which claimed many lives, and not only adults but innocent children also became victims. At that time, Abdurrahman Wahid considered the incident a tiny matter that did not need to be exaggerated. Even though

Abdurrahman Wahid's statement is very naïve in the eyes of all of us who know exactly what happened, it is significantly cutting for the families of the victims, especially for those who are violators.

However, it has all become a precious lesson. A little encouraging and slightly healed when in Abdurrahman Wahid's cabinet, namely the formation of a state ministry for human rights affairs, although the ministers constantly change, from Prof. Dr Yusril liza Mahendra to Baharuddin Lopa and switch again to Marsilam Simanjuntak, and now switch again to Prof. Dr Yusril liza Mahendra. The government and the Council have approved a law in the Didang human rights court, namely the Number law. 26 Year 2000, on human rights courts. This institution will become one of the strongholds of human rights in Indonesia, indicating the political will of the nation's elite to respect human values.

Even so, enforcing human rights has only reached the conceptual stage at the implementation stage. In the settlement of human rights violations in East Timor, there are still big questions for the community about the results of the list that has been heard in one of the courts in Jakarta. Many hope that the first trial of these cases of gross human rights violations will be a milestone in the history of human rights enforcement in Indonesia[23].

The wise man said, "willpower alone is not enough to make things happen. Because that will must be followed up with attitude and deed." Eleanor Roosevelt once said, "The destiny of human rights is in t the hands of all our citizens in all our communities." This is the best opportunity for us to rethink the democratic movement of this nation. The transition to democracy should mean a transition to peace and respect for the essence of humanity.

[23] Eko Riyadi, (2019). Hukum Hak Asasi Manusia Prespektif Internasional, Regional dan Nasional, Jakarta; Rajagrafindo Persada.

During the reign of Abdurrahman Wahid, an essential aspect of upholding human rights was creating and maintaining public order and stability. Human rights will be complex if governments cannot create human security. This security will be able to be maintained in an orderly and stable social condition; hence, human rights in their application must be accompanied by awareness of the importance of security. Of course, efforts to protect human rights within the human security framework face diverse obstacles. Generally, the biggest obstacle is that there has not been a public awareness that human rights and security are not concepts that need to be opposed. Especially considering the situation of Indonesia, which is very pluralist ethnically, religiously, racially, and between groups, as well as the current conditions that are very vulnerable to disputes and conflicts, these two concepts must be harmonized harmoniously.

4. Conclusion

The fact that government actions that violate the principles of constitutionalism, especially violating human rights, can always be formally justified constitutionally because they are given legal clothing in the form of laws or other laws and regulations has caused a shift in principles and concepts from a state of law to a state of law that happens a lot in Indonesia, namely the change of the state of law into a state of law that lays down laws created by the government as a measure of truth. In such a state of law, the measures of truth are no longer a sense of justice and propriety with a high ethical spirit but sentences of laws made through engineering for the benefit of the government. In the rule of law, any unjust government action is justified by lawmaking through attribution of authority, so the law is placed as a justification tool with a "positivist-instrumentalist" character. A law of a positivist-instrumentalistic character is a law that is used as an instrument to justify what the ruler will or has done." By itself, the legitimacy possessed by the government in exercising power is also more formal legitimacy or

legitimacy full of contradictions for violations and contradictions in Indonesia become inevitable because, in a regime whose legitimacy is just a formality, it is full of contradictions and opens up the parliament for various crises to occur.

Human rights violations that occur within the framework of disruption of security/territorial integrity and human rights violations committed by government officials are often in contact with subversive accusations; on the other hand, the government generally uses accusations of undermining government authority against parties considered contrary to government policy. The actual forms of human rights violations in this category generally vary, and arbitrary arrests to disappearances of life, either through kidnapping or torture or even shootings allegedly carried out by authorities (for example, in the case of student demonstrations at Trisakti University, Semanggi Bridge and Atmajaya Catholic University in 1989). Indonesia only formally recognized these human rights values in the second amendment to the constitution or practically not so long ago. It is certain that previously, the existing legislation in Indonesia had not accommodated human rights values, and during that time, we were faced with problems of human rights violations everywhere. Such as legislation in the field of mining (Law No. l1/1967), legislation in the field of forestry for example (Law No. 40/1999), which does not seem to accommodate the interests of indigenous peoples, where their forests are cleared, and their customs are destroyed due to the absence of human rights protection for indigenous peoples, as well as many more laws that reflect the unaccommodated protection of community rights.

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