

# Implementation and Challenges of Human Rights Enforcement in Indonesia

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## Abstract

### Article history:

Received: July 7, 2024

Revised: August 22, 2024

Accepted: October 15, 2024

Published: December 30, 2024

### Keywords:

Accountability  
Human Rights,  
Implementation  
Justice  
Reformasi.

### Identifier:

Newsletter

Page: 139-154

<https://nawala.io/index.php/ijgspa>

This study discusses the implementation of Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts in the context of human rights enforcement in post-reform Indonesia. The method used is normative juridical with a qualitative descriptive approach that focuses on the analysis of legal norms, academic literature, and institutional reports related to the implementation of the two laws. The results of the study show that the implementation of these two regulations still faces various obstacles, including weak coordination between law enforcement agencies, political intervention in the judicial process, and low public legal awareness of their basic rights. In addition, the lack of synchronization between national law and international legal standards has caused the effectiveness of the human rights justice system to be suboptimal. This research emphasizes that legal reform is needed to strengthen institutional coordination, clarify evidentiary mechanisms, increase the accountability of law enforcement officials, and expand protection for victims. In conclusion, consistent political commitment and systemic reforms are the main prerequisites for the realization of substantive justice and the sustainable promotion of human rights in Indonesia.

## 1. Introduction

Human Rights (HAM) is a fundamental element in the national legal system that guarantees the dignity, dignity, and freedom of individuals without discrimination. In Indonesia, the commitment to the protection of human rights is explicitly regulated in Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts. These two regulations are important milestones in Indonesia's legal history after the 1998 reform, because they mark a paradigm shift in the state from an authoritarian regime to a government that upholds the principles of the rule of law and substantive justice.<sup>1</sup> However, in practice, the implementation of the two laws still faces serious challenges both structurally and politically.

Law No. 39 of 1999 provides a normative basis for the protection and promotion of human rights in Indonesia. This regulation establishes the basic rights of citizens, including the right to life, the right to justice, freedom of opinion, and protection against discrimination. Furthermore, this law also establishes the National Human Rights Commission (Komnas HAM) as an independent institution that functions to conduct studies, research, counseling, and investigations of human rights violations. However, this law is declarative and normative, so its effectiveness is highly dependent on other legal instruments that are able to crack down on serious violations.<sup>2</sup> This is where the role of Law No. 26 of 2000 becomes crucial.

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<sup>1</sup> Ridwan Arifin. "Indonesian Political Economic Policy and Economic Rights: An Analysis of Human Rights in the International Economic Law." *J. Priv. & Com. L.* 3 (2019): 38

<sup>2</sup> Alex Chandra, and Supot Rattanapun. "Importance of Implementation and Enforcement of Human Rights in Indonesia Now." *Amang Long Law Review* 5, no. 2 (2023): 549

Law No. 26 of 2000 is present as a juridical-procedural instrument that regulates the mechanism of investigation, investigation, prosecution, and justice for gross human rights violations such as genocide and crimes against humanity. Through this law, Indonesia seeks to demonstrate its commitment to transitional justice and international responsibility. However, more than two decades after it was passed, the effectiveness of the Human Rights Court is still in doubt. Several major cases, such as the Paniai, Wasior, and Wamena Tragedy, show that the investigation and investigation process is often stopped between Komnas HAM and the Attorney General's Office due to differences in the interpretation of authority.<sup>3</sup> This illustrates the weak coordination between institutions and legal uncertainty that has a direct impact on justice for victims.

According to Mirza et al.<sup>4</sup>, the difference in interpretation between national law and the international legal regime regarding human rights has also exacerbated this condition. This inconsistency makes it difficult to categorize various gross human rights violations appropriately in the context of national law, so that the space for impunity is still wide open. Meanwhile, Priyosantoso<sup>5</sup> emphasized that the government's political will is the dominant factor in the success or failure of human rights enforcement. In many cases, the state prefers a non-judicial approach or symbolic reconciliation to a transparent and accountable judicial process.

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<sup>3</sup> Darul Akbar, and Muhammad Amin. "Kedudukan Komisi Nasional Hak Asasi Manusia Berdasarkan Peraturan Perundang-Undangan." *Limbago: Journal of Constitutional Law* 3, no. 2 (2023): 255

<sup>4</sup> Isoni Muhammad Miraj Mirza, Rudi Natamiharja, and Jalil Alejandro Magaldi Serna. "Social Transformation of International Human Rights Law Through Indonesian Constitutional Court." *Uti Possidetis: Journal of International Law* 4, no. 3 (2023): 441

<sup>5</sup> Rudi Priyosantoso. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi." *Jurnal Ilmu Kepolisian* 15, no. 3 (2021): 10

On the other hand, contemporary socio-political dynamics demand an expansion of the meaning of human rights. Burhani<sup>6</sup> highlights the need for a socio-legal approach in dealing with new issues such as the rights of minority groups and gender. They assessed that human rights protection in Indonesia is not only related to past gross violations, but also to growing social challenges such as gender-based violence and freedom of expression. The same thing was stated by Noer and Kartika<sup>7</sup> who stated that cases of sexual violence in educational institutions show that the legal protection system for victims is still weak, so synergy is needed between Law 26/2000 and new regulations such as Law 12/2022 concerning the Crime of Sexual Violence.

In the institutional context, Fitri et al.<sup>8</sup> highlight the limitations of the judicial system in providing restitution for victims of gross human rights violations. He emphasized that the restitution system in Indonesia does not guarantee the full recovery of victims, both from a legal and social perspective. In fact, this aspect of recovery is an integral part of the principles of truth, justice, reparation, and guarantee of non-recurrence which are international human rights standards. Thus, the revision of Law 26/2000 is an urgent need to adjust to the demands of transitional justice and victim protection.

The relationship between Law No. 39 of 1999 and Law No. 26 of 2000 is not only formal in nature, but also reflects the relationship between norms and

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<sup>6</sup> Ahmad Najib Burhani. *Dilema Minoritas di Indonesia*. Gramedia Pustaka Utama, 2020

<sup>7</sup> Khaerul Umam Noer, and Titiek Kartika. *Membongkar kekerasan seksual di pendidikan tinggi: pemikiran awal*. Yayasan Pustaka Obor Indonesia, 2022

<sup>8</sup> Wardatul Fitri, FX Djoko Priyono, and Bambang Eko Turisno. "Aspek hukum keperdataan terhadap pemenuhan hak restitusi dalam perkara tindak pidana." *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 1 (2023): 89

enforcement. Law 39/1999 functions as a normative foundation that describes basic human rights, while Law 26/2000 is an instrument for its enforcement through the judicial mechanism. However, the implementation of these two laws suggests that laws without effective enforcement will lose their substantive meaning. As Sobarnapraja<sup>9</sup> said, the human rights legal system in Indonesia still needs structural reform in order to be able to respond to the real needs of justice in society.

Based on this description, this research is directed to answer two main problem formulations, namely:

RQ1: How effective is the implementation of Law No. 39 of 1999 and Law No. 26 of 2000 in upholding the protection and fulfillment of the rights of victims of gross human rights violations in Indonesia?

RQ2: What are the main challenges faced in the enforcement of the law on gross human rights violations based on Law No. 26 of 2000?

RQ3: Why is reform of the investigation mechanism and human rights justice urgent for the Indonesian justice system?

## 2. Methods

This research uses a normative juridical method, which is a legal research method that focuses on the study of applicable positive legal norms and legal principles that are the basis for the formation of laws and regulations. This approach is used because the main purpose of the research is to analyze the relationship

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<sup>9</sup> Agus Sobarnapraja. "Penegakan Hukum Pelanggaran Hak Asasi Manusia di Indonesia." *Jurnal Ilmu Kepolisian* 14, no. 1 (2020): 13

between Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts, as well as to assess the effectiveness of its application in the national legal system. Through a normative juridical approach, this study examines in depth the content, structure, and relationship between legal norms that govern the protection and enforcement of human rights in Indonesia, both in terms of legal substance (law in books) and its theoretical application.

This approach involves the analysis of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations directly related to human rights, such as the 1945 Constitution, Law No. 39 of 1999, Law No. 26 of 2000, and various relevant implementing regulations. Secondary legal materials include research results, scientific journals, books, and reports from institutions such as Komnas HAM, which provide explanations, interpretations, and academic views on the application of the two laws. Meanwhile, tertiary legal materials in the form of legal dictionaries and encyclopedias are used to strengthen the conceptual understanding of the legal terms used in research.

The data analysis method used is qualitative descriptive, namely by describing and interpreting the content of legal norms based on applicable principles, principles, and theories. The researcher examines the relationship between normative provisions and empirical conditions reflected in cases of gross human rights enforcement in Indonesia. This approach allows researchers to identify the gap between normative law and its factual implementation, so as to provide rational legal arguments for the need for reform of the human rights justice system. Thus, the normative juridical method in this study not only explains the content of the law,

but also assesses its effectiveness and relevance in the context of justice and human rights protection in Indonesia.

### **3. Results and Discussion**

#### **3.1. Implementation of Law No. 39 of 1999 and Law No. 26 of 2000 concerning Human Rights**

The implementation of Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts is a manifestation of the state's commitment to guarantee, protect, and uphold human rights values in Indonesia. These two regulations are mutually sustainable, where Law No. 39 of 1999 is the normative basis that affirms basic human rights, while Law No. 26 of 2000 acts as a procedural legal tool to enforce gross human rights violations. In their application, these two laws face complex dynamics due to institutional issues, legal politics, and norm interpretation.<sup>10</sup>

Law No. 39 of 1999 affirms that human rights are inherent in every individual and must be protected by the state. Its implementation is carried out through Komnas HAM, which is authorized to review, research, and investigate alleged human rights violations. However, the effectiveness of this institution is limited because its authority only reaches the initial investigation stage without being able to force the legal process to proceed to an investigation.<sup>11</sup> The limited coordination

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<sup>10</sup> Ridwan Arifin. "Indonesian Political Economic Policy and Economic Rights: An Analysis of Human Rights in the International Economic Law." *J. Priv. & Com. L.* 3 (2019): 38

<sup>11</sup> Darul Akbar, and Muhammad Amin. "Kedudukan Komisi Nasional Hak Asasi Manusia Berdasarkan Peraturan Perundang-Undangan." *Limbago: Journal of Constitutional Law* 3, no. 2 (2023): 244

between Komnas HAM and the Attorney General's Office is the main obstacle. Of the 14 cases of gross human rights violations investigated since 2000, most have not proceeded because the files are considered to have not met the formal and material requirements. These cases show the weak coordination mechanism between institutions.<sup>12</sup>

In addition to structural barriers, significant political challenges also arise. The political will factor of the government greatly determines the direction of human rights enforcement. The government often chooses non-judicial settlements through reconciliation or moral compensation rather than formal legal processes, which are considered more politically secure but often ignore the principle of substantive justice.<sup>13</sup> Meanwhile, the difference in interpretation between national law and international standards adds to the complexity. Hamzah and Yusuf<sup>14</sup> highlight that the interpretation of gross human rights violations in Indonesia is still narrow compared to the provisions of the Rome Statute of the International Criminal Court (ICC). Because it has not ratified the Rome Statute, the national mechanism is not yet in line with international norms, so some serious violations do not meet gross human rights qualifications under national law.

From the social side, low human rights literacy is also a challenge. Burhani<sup>15</sup> assessed that many people do not understand their rights and how to demand justice

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<sup>12</sup> Laode Husen, Andi Ifal Anwar, Sufirman Rahman, and M. Kamal Hidjaz. "Implementation of legal guarantees for human rights protection in indonesia." *Journal of Law and Sustainable Development* 11, no. 4 (2023): e624

<sup>13</sup> Rudi Priyosantoso. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi." *Jurnal Ilmu Kepolisian* 15, no. 3 (2021): 10

<sup>14</sup> M. Guntur Hamzah, and Ria Mardiana Yusuf. *Birokrasi modern*. PT. RajaGrafindo Persada-Rajawali Pers, 2023

<sup>15</sup> Ahmad Najib Burhani. *Dilema Minoritas di Indonesia*. Gramedia Pustaka Utama, 2020



legally. This weakens the effectiveness of human rights protection because public legal awareness is still low. In addition, Fitri et al.<sup>16</sup> added that the implementation of restitution and reparation rights for victims of gross human rights violations is still not optimal because there are no clear implementing regulations.

Despite facing various obstacles, these two laws remain the main foundation of the human rights protection system in Indonesia. Institutional reform, inter-regulatory synchronization, and capacity building for law enforcement are urgent to realize justice for victims and strengthen the state's commitment to human rights values.

### **3.2. Challenges in the Enforcement and Implementation of Human Rights Law in Indonesia Based on Law No. 26 of 2000**

Although Indonesia already has a legal framework through Law No. 39 of 1999 and Law No. 26 of 2000, its implementation still faces serious challenges. These obstacles come not only from institutional and procedural legal aspects, but also from political and cultural factors of the community. The two main challenges that often arise in human rights enforcement in Indonesia are the stagnation of coordination between law enforcement agencies and political intervention in the legal process, which causes justice for victims to be often delayed or even not realized.<sup>17</sup>

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<sup>16</sup> Wardatul Fitri, FX Djoko Priyono, and Bambang Eko Turisno. "Aspek hukum keperdataan terhadap pemenuhan hak restitusi dalam perkara tindak pidana." *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 1 (2023): 89

<sup>17</sup> Darul Akbar, and Muhammad Amin. "Kedudukan Komisi Nasional Hak Asasi Manusia Berdasarkan Peraturan Perundang-Undangan." *Limbago: Journal of Constitutional Law* 3, no. 2 (2023): 249

The first challenge, namely the weak coordination between Komnas HAM and the Attorney General's Office, is a fundamental weakness in the implementation of Law No. 26 of 2000. Many of the results of the investigation were not followed up due to differences in interpretation of the criteria for gross human rights violations and the completeness of the case file. As a result, legal proceedings often stop at the administrative stage without clarity of time. Arifin<sup>18</sup> emphasized that the absence of an effective coordination mechanism creates legal stagnation and impunity space, contrary to the purpose of establishing the Human Rights Court. In addition, Law No. 26 of 2000 has not clearly regulated the standard of proof, so the authorities often have difficulty collecting formal evidence. According to Mirza et al.<sup>19</sup>, proving gross human rights violations requires a different approach because it concerns systematic crimes involving state actors, but the national legal approach is still positivistic and procedural.

The second challenge is political intervention and obstacles in the enforcement of human rights law. Priyosantoso<sup>20</sup> explained that the success of human rights enforcement is highly dependent on the political will of the government. The approach that is often taken is in the form of symbolic reconciliation and social compensation, not a judicial process, because it is considered more politically safe even though it ignores justice for the victims.

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<sup>18</sup> Ridwan Arifin. "Indonesian Political Economic Policy and Economic Rights: An Analysis of Human Rights in the International Economic Law." *J. Priv. & Com. L.* 3 (2019): 38

<sup>19</sup> Isoni Muhammad Miraj Mirza, Rudi Natamiharja, and Jalil Alejandro Magaldi Serna. "Social Transformation of International Human Rights Law Through Indonesian Constitutional Court." *Uti Possidetis: Journal of International Law* 4, no. 3 (2023): 451

<sup>20</sup> Rudi Priyosantoso. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi." *Jurnal Ilmu Kepolisian* 15, no. 3 (2021): 10

Sobarnapraja<sup>21</sup> added that this obstacle is rooted in the weak guarantee of the independence of investigative institutions and courts in cases involving state officials, thus opening up opportunities for stakeholder intervention and making law enforcement hesitant to act decisively.

A concrete example of this challenge can be seen from one case of gross human rights violations that has been investigated by Komnas HAM for a long time but has not obtained legal certainty. Despite official recommendations showing strong indications of gross human rights violations, the case file continues to be returned by the Attorney General's Office because it is considered incomplete. The inter-agency communication process lasts for a long time without a definite result, while the victim is still waiting for justice.<sup>22</sup> This condition reflects the weakness of effective legal mechanisms at the national level.

In addition to political and institutional factors, low public awareness of the importance of human rights is also an obstacle. Burhani<sup>23</sup> said that Indonesia's legal culture still prioritizes social harmony over legal accountability, so that human rights issues are often considered sensitive and politicized. The public's lack of understanding of fundamental rights makes support for law enforcement weak. Thus, Fitri et al.<sup>24</sup> emphasized the need for more responsive legal and institutional reforms, including strengthening coordination, updating evidentiary guidelines, and

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<sup>21</sup> Agus Sobarnapraja. "Penegakan Hukum Pelanggaran Hak Asasi Manusia di Indonesia." *Jurnal Ilmu Kepolisian* 14, no. 1 (2020): 13

<sup>22</sup> Laode Husen, Andi Ifal Anwar, Sufirman Rahman, and M. Kamal Hidjaz. "Implementation of legal guarantees for human rights protection in indonesia." *Journal of Law and Sustainable Development* 11, no. 4 (2023): e624

<sup>23</sup> Ahmad Najib Burhani. *Dilema Minoritas di Indonesia*. Gramedia Pustaka Utama, 2020

<sup>24</sup> Wardatul Fitri, FX Djoko Priyono, and Bambang Eko Turisno. "Aspek hukum keperdataan terhadap pemenuhan hak restitusi dalam perkara tindak pidana." *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 1 (2023): 89

increasing judicial independence. This reform is important to affirm the state's commitment to the principle of non-impunity and strengthen public trust in the law.

### **3.3. The Urgency of Reforming Human Rights Law Enforcement Mechanisms in Indonesia**

The urgency of reform of human rights law enforcement in Indonesia arises due to the weak implementation of Law Number 26 of 2000 concerning Human Rights Courts and the limited effectiveness of Law Number 39 of 1999 concerning human rights as a normative basis. This reform is not only a structural necessity, but also a moral and constitutional responsibility of the state to ensure justice, truth, and restoration for victims of human rights violations. As a member of the UN Human Rights Council, Indonesia has an international obligation to uphold the principles of justice, truth, reparation, and non-recurrence, although until now its legal system still shows weaknesses in the investigation mechanism and the effectiveness of the judiciary.<sup>25</sup>

The first urgency of reform is the affirmation of the coordination mechanism between Komnas HAM and the Attorney General's Office. Many cases of gross human rights violations stop at the investigation stage due to the lack of clarity in communication procedures and verification of investigation results. This condition causes legal stagnation without certainty. According to Sobarnapraja<sup>26</sup>, a law without a strong implementing mechanism is only a moral declaration without coercion.

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<sup>25</sup> Ridwan Arifin. "Indonesian Political Economic Policy and Economic Rights: An Analysis of Human Rights in the International Economic Law." *J. Priv. & Com. L.* 3 (2019): 38

<sup>26</sup> Agus Sobarnapraja. "Penegakan Hukum Pelanggaran Hak Asasi Manusia di Indonesia." *Jurnal Ilmu Kepolisian* 14, no. 1 (2020): 13

Reform is needed so that the results of the Komnas HAM investigation have legal force for investigations and remove ambiguity of inter-agency authority.

The second aspect is the strengthening of the independence and accountability of human rights judicial institutions. In practice, law enforcement often faces political pressure that affects the objectivity of decisions. Priyosantoso<sup>27</sup> emphasized that political intervention in the legal process is the root of impunity in Indonesia. Therefore, it is necessary to build an independent monitoring mechanism and public transparency so that human rights judicial institutions can work free from executive influence.

Reform is also needed in the adaptation of national law to international standards. Hamzah and Yusuf<sup>28</sup> stated that Indonesia has not fully adopted the basic principles of international human rights law, especially regarding the definition and classification of gross human rights violations. As a result, some alleged systematic violations cannot be processed because they do not meet national juridical qualifications. Legal reform is needed to clarify normative boundaries and affirm the conformity of national law with the Rome Statute of the International Criminal Court.

From a social perspective, the urgency of reform includes the restoration of victims' rights and public trust in the law. Burhani<sup>29</sup> emphasized that justice must include the psychological and economic recovery of the victim, not just the

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<sup>27</sup> Rudi Priyosantoso. "Hak Asasi Manusia di Indonesia: Tinjauan Politik Hukum Era Reformasi." *Jurnal Ilmu Kepolisian* 15, no. 3 (2021): 10

<sup>28</sup> M. Guntur Hamzah, and Ria Mardiana Yusuf. *Birokrasi modern*. PT. RajaGrafindo Persada-Rajawali Pers, 2023

<sup>29</sup> Ahmad Najib Burhani. *Dilema Minoritas di Indonesia*. Gramedia Pustaka Utama, 2020

punishment of the perpetrator. However, the absence of implementing rules has made many victims have not received restitution or compensation. In addition, Fitri et al.<sup>30</sup> emphasized the importance of building a participatory legal culture through legal education and community empowerment. Reforms that touch on the substance, structure, and culture of the law are an absolute prerequisite for eliminating impunity and affirming Indonesia's commitment to justice and human dignity.

#### **4. Conclusion**

Based on the results of the analysis of the implementation of Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts, it can be concluded that the human rights legal framework in Indonesia has provided a strong basis for the protection of human rights. However, the effectiveness of its implementation still faces serious obstacles from structural, political, and social aspects. Normatively, the two laws have a complementary relationship with Law No. 39 of 1999 as the principle basis and Law No. 26 of 2000 as an instrument of enforcement. However, at the implementation level, the implementation of serious human rights enforcement is still not optimal due to weak inter-agency coordination, unclear investigation mechanisms, and low judicial independence.

These challenges show that the enforcement of human rights in Indonesia does not fully reflect the substantive justice expected by society. Therefore, reform

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<sup>30</sup> Wardatul Fitri, FX Djoko Priyono, and Bambang Eko Turisno. "Aspek hukum keperdataan terhadap pemenuhan hak restitusi dalam perkara tindak pidana." *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 1 (2023): 89

of the legal system is an urgent need to correct structural weaknesses and strengthen the accountability of law enforcement agencies. The reform also needs to be directed at aligning national law with international standards and empowering people to have legal awareness and the courage to demand their rights. Thus, the successful implementation of the two laws is determined not only by the power of regulation, but also by political commitment, institutional integrity, and the active participation of the community in realizing justice and respect for human dignity.

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