

**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.

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