

# Obligation to Fulfill and Protect Human Rights Reviewed According to State Law

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**Abstract.** Based on Pancasila and the 1945 Constitution, Indonesia is a state with legal system. For instance, this duty to uphold and defend human rights, protects social and cultural rights. However, there are problems with serious human rights violations such as taking other people's lives. This research aims to provide a sense of security for every citizen to obtain their right to life. Normative legislation is the study methodology employed. According to State Law, human rights courts are meant for those who have committed crimes against humanity and genocide. The findings of his research clarify that the application of Law No. 26 of 2000 concerning Human Rights courts serves as guidance for addressing human rights abuses through special courts. The Attorney General must issue an order to halt the probe if the findings do not yield adequate proof, and other options, such a Truth and Reconciliation Commission, will be presented.

**Keywords:** Human rights protection, right to life, reconciliation.

## 1 Introduction

The Human Rights Doctrine is accepted as a moral, political, and legal framework and as a guide for building a more peaceful world free from fear, oppression, and unfair treatment. According to *Assiddiqie*, the legitimate state ensures the security of basic liberties in each country which can be called *rechtsstaat*. Public lawful governmental issues in Indonesia is specified in the 1945 Constitution of the Republic of Indonesia in Article 1 section (1) which expresses that Indonesia is a legitimate state. Consequently, keeping up with and safeguarding basic freedoms is important for endeavors to make common liberties part of public regulation. The significance of common liberties is the essential freedoms of each and every individual which remember the right to life for the political, lawful, monetary, social, and social fields. These rights are important rights that must be possessed by all people and community groups regardless of their religion, ethnicity, gender, or sex.[1] This is as stated in the Universal Declaration of Human Rights of 1948, article 2 which regulates religious and ethnic differences that make people respect each other. Where appreciation is everyone's right. Over the history of human rights, three components have been maintained or saved: integrity, freedom, and equality. To achieve these three components, respect for the dignity of every human being is necessary. Indonesia's legal authority to fulfill the constitutional obligations of its citizens is protected and guaranteed by the constitution and its laws and regulations. The freedoms moved

by Indonesian residents or individuals are the commitment of the state to be focused on safeguarding common liberties, which are alluded to as the essential privileges of residents, which are expressed unequivocally in the constitution and different regulations and guidelines. The option to be content and agreeable as a group, sovereign freedoms, and equity are likewise one of the state's commitments.[2] The right to prosperity, the right to the general welfare, the right to protection for every victim of life, the right to an intelligent life of the nation, the right to order, eternal peace and social justice, the right to an electoral process, deliberation, and fair representation. However, human rights, or the basic rights of citizens, are included in the 1945 Constitution, including the right to work and a decent salary (Article 27 of the 1945 Constitution), the right to associate and assemble, express one's thoughts, marry, have children, the right to basic needs, the right to guarantee legal certainty, the right to compensation and fair treatment in work, the right to citizenship status, the right to freedom of worship and embrace religion, the right to be free from torture, the right to believe in God and freedom in matters of religion, faith and beliefs (Article 29 of the Constitution 1945).

Until now, the right to life of citizens can be torn apart if they commit acts that violate the rules of a country, sometimes the right to life can no longer be had through the death penalty due to various criminal acts that have been committed on their own initiative for crimes or because of problems. state politics so that they commit war crimes with mass extermination which is usually called Genocide. The actions of perpetrators who have committed serious violations of other people's rights to life are very contrary to the concept of human rights or the right to life which is protected by law. Historical studies show that the death penalty was used in the 18th century BC in the laws of King Hammurabi of Babylon, who stipulated the death penalty for 25 crimes. In the 14th century BC to 5 BC, capital punishment was also used in the Draconian Code of Athena and the Tablets of the Twelve Roman Empires. From a contemporary perspective, the murder was carried out in various quite heinous ways, such as crucifixion, drowning, torture to death, burning, and so on. In the nineteenth century the situation in France during the Enlightenment movement was very different. Tragedy marked the beginning of the development of modern thought. Many people who were considered opponents of the French revolution, especially from the nobility and church, were executed by guillotine or beheading rather than fighting for the freedom of citizens (Habeas Corpus). Like the hanging law used by Iraq, Saudi Arabia and Malaysia still apply this punishment. The death penalty is then carried out in various ways that are considered more humane with the aim of reducing the pain experienced by those who undergo it. Several countries, including Indonesia, still do executions with team shooters. The state of New York, USA, developed chair electricity in 1890, the first to be used for executed King William. The state of Nebraska is the only country that accepts its chair electricity until the moment. The state of Nevada later used a gas chamber with cyanide in 1924. Finally, sanctions \_ came into force in 1999. With the development era for makes it easier execution law dead use method inject dead. Confession punishment dead almost No There is its place in a democratic and cultured society in the international world. " Even though punishment dead not yet forbidden based on law international, trends to prohibition the very clear," said Dewa in court UN Commission. There are choices of opinion at the Convention International on Civil and Political Rights 1989, which aims to abolish punishment, and shows that punishment must deleted.[3]

Democracy is a way for the state to exercise power by respecting human rights. In understanding democracy in a way of course you should also understand Human Rights Humans. Actually, democracy and human rights Man problem already passed so almost all countries around the world claim as a democratic country and respects human rights Human. Democracy set that man own sovereignty, the so-called principle of popular sovereignty. Contract theory according to Asshiddiqie states that rights everyone should \_ achieve in a way collective. The research focuses on two concepts main about the rule of law, viz concept of rule of law continental Europe (rechtsstaat) and Anglo-American rule of law. The writer concentrates on the discussion of what is the state of law and rights basic man relationship, not a state of law continental Europe (rechtsstaat) or Anglo-American law (rule of law), but the Pancasila law state. Indonesia had a Declaration of Human Rights Man a long time ago, but new entered in the 1945 Constitution which includes basic human, fine way personal nor social, which is emphasized in Pancasila from please First until fifth. Historically, Indonesia was the first country to adopt Human Rights before the UN Human Rights was only established in 1948. Many cases of Human Rights violations or crimes against humanity were recorded abroad, especially in Indonesia, where the perpetrators roamed freely and were not prosecuted. law. The peculiarity of exemption is when political and military pioneers who are associated with being associated with serious basic liberties infringement including political and military pioneers who are associated with being involved, like massacre, human wrongdoings, and atrocities, are not indicted. political regulation that has been demonstrated for 100 years.[3] The aim of this research is to provide a sense of security for every citizen to protect their right to life and to find out how the legal system functions to resolve cases of human rights violations in Indonesia. The research Problem is what is the legal system used in Indonesia when human rights violations occur.

## **2 Method and Approach**

### **2.1 Methods**

This examination utilizes regularizing regulation through a legal methodology, case approach, and scientific methodology.[4] In light of a legitimate methodology, the creator will utilize the premise of the Law on Common freedoms, the Show on the Counteraction and Task of Demonstrations of Decimation, and a few other lawful instruments at the public and worldwide levels. Aside from that, the creator will analyze each impediment that might happen connected with the overall set of laws in Indonesia in work to safeguard culprits for their freedoms to life as people lawfully. In this exploration, optional information comprises of essential legitimate, auxiliary, and non-lawful materials. After that, it is processed and analyzed using descriptive techniques.[5]

### **2.2 Approach**

Type of research This use approach is juridical normative in nature qualitative, that is research that refers to related legal norms with violation of Human Rights Human; approach juridical refers to laws and regulations applicable legislation, theory law, and opinion expert. The scientific value of a discussion of the legal issue under study depends largely on the methodology used. Consequently, it is important to understand the methods to be used in

normative legal research. Legal theories, legal science theories, opinions of leading experts, also, Regulation no. 39 of 1999 concerning Common liberties are maintained and safeguarded by the state, regulation, government, and each individual for honor and assurance of human respect. This is in line with what Soetandyo Wingoesobroto said, who stated that doctrinal legal research is legal research that only looks for positive rules or statutory regulations and then finds the legal basis.

### **3 Discussion**

Settlements related to human rights certainly require support from various parties, starting from the community and government, as stated in the law. Apart from that, the government must carry out reforms based on the concept of the legal system, namely legal structure, legal substance, and legal culture, in terms of legal reform and the basic elements of democracy. According to Friedmen, even with good legal norms, the law will not be effective in achieving its goals if it is not supported by reliable and trustworthy law enforcers.[6] Laws with good norms and supported by reliable and trusted law enforcers will also be less effective without being supported by the culture of the community concerned.

#### **3.1 Legal Structure**

According to Armada (2018), legal theory is a whole interrelated statement about the conceptual system of legal rules, decisions, and rules. This framework is remembered for positive regulation in Indonesia. [5] The essence of the cumulative causality theory is that the judge sees a series of incident factors that are considered to intervene with other factors as the cause (cause) of an offense. In other words, it is alleged that the "second cause" perpetrator intervened in the "first cause" to cause the harm. Both perpetrators are charged with criminal liability if the "second cause" was foreseen and resulted in the same thing. According to Pura (2017), legal structure states the structural parts or organs involved in a mechanism, both in making regulations and in implementing or implementing regulations. One of the progressions made after the change to the 1945 Constitution of the Republic of Indonesia was expanded public consideration and holders of ability to confirm and maintain basic freedoms. As a result, ad hoc institutions and judicial institutions established based on law have emerged, and both play an important role in upholding human rights in Indonesia. There are two state organizations that uphold basic freedoms, to be specific the Public Common liberties Commission, the Indonesian Youngster Insurance Commission (KPAI), the National Commission on Violence Against Women, and the Truth and Reconciliation Commission. Second, judicial institutions as human rights enforcers, consisting of the Human Rights Court and the Constitutional Court (Putra). Furthermore, Minister of Law and Human Rights Regulation Number 10 of 2017 concerning Education and Training using E-Learning Methods in the Ministry of Law and Human Rights environment sets the goal of implementing e-learning training to increase professionalism and effectiveness in carrying out the duties and functions of the Ministry of Law and Human Rights, which requires Human Resources to have knowledge of technology in order to keep up with current developments. and it is easier to map problems and solutions through the online system. Of course, related to the normative legal research methods used in this research are the statutory approach, case approach and analytical approach. Based on a legal approach, the Convention on the Prevention of Genocide, and several other legal instruments at

the national and international levels. Apart from that, there is also a legislative approach that regulates the death penalty for criminals which is currently prohibited even though some countries still legalize the death penalty through hanging or using injections.

### **3.2 Law Enforcement and Fulfillment of Human Rights Humans in Indonesia**

Enforcement related laws with Human Rights Man No Only A draft theoretical just but also facts that the state must protect rights human. Protect the right basics of man through confession to rule man as caliph on Earth and fulfill the obligation to everyone to guard the stability of other people's lives.[7]

There are various rights basic human beings in general can categorized, namely:

- a) First, Human Rights Private, also known as a Human Right Personal, is a right related to human rights to life personal human. Human rights This includes 1) the right's freedom to move, travel, and move around; 2) the right freedom to emit or state opinion; 3) the right freedom to choose and participate in an organization or association; and 4) the right freedom for choose, embrace, and practice the religion and beliefs that each person believes in.
- b) Second, Legal Human Rights, also known as Legal Equity Rights. Example right basic law This is the right to get the same treatment in law and government; 1) right to become civil servants (PNS); 2) right for get service and protection law.
- c) Third, Human Rights Judiciary, also known as a Process Right. Right to be treated in a way the same in court proceedings is right basic. One example of right basic Justice is: 1) the right to accept defense in court; and 2) the right to the same treatment to search, arrest, detention, and advance investigation law.[8]

Draft Universalism and Relativism of Human Rights Man entered in Amendment Fourth, the 1945 Constitution of the Republic of Indonesia, which expands the scope of protection rights basic human. Human rights man only discussed in Article 28 of the amended Constitution. Chapter This ensures basic universal human, like the right on freedom to gather, live, form a family, grow, work, and become the same in front law, the right to religion and statement opinion, the right to information, the right to protection from torture and treatment No humane and condescending dignity, rights on healthy environment, and rights on protection emergency. [8] Formation Constitution right basic humans in Indonesia are progressing important in award right basic human. According to Law no. 39 of 1999 in article 1 paragraph (1) concerning Human Rights Humans, in fact, meaning that explain " a set rights inborn in nature and presence man as animals of God All-powerful and are His required effortlessness regarded, maintained high, and safeguarded by the state, regulation, government, and everybody for honor and security honor and nobility human."

Hadiprayitno Once state that, in connection with condition rights basic humans in Indonesia, especially in matter formation system law rights basic human. Simultaneously with economic, social, and cultural, the law here also guarantees various recognized rights in a way internationally, like rights on property, rights For work, and rights on education. Neither Laws Foundation 1945 nor Basic Law of Human Rights Man confirms idea not quite enough to answer man together with the basic human In the Human Rights Act Man explains state that everyone has an obligation To acknowledge limitations laid out by regulation For objective guarantee acknowledgment and regard the privileges and opportunities of others and in view of thought ethical quality, strict qualities, security and request general in open majority rule. Human rights man protected in a way proportional in Indonesia if the draft is not quite enough answer man acknowledged. In fact, the National Action Plan on Human Rights Humans 1998 - 2003 states

that values, customs Indonesian customs, culture, and traditions must be based on promoting and protecting rights basic man. Perspective this, no doubtful Again, supportive draft relativism about the right basic man including in manifestation from demands open ethics, and every public own ability for reach the objective that. right basic man must consider values society, which means that objective right basic man must consider values society.

### **3.3 Death Penalty in Perspective with Human Rights Man**

Poured in Perspective of the Universal Declaration of Human Rights, a declaration about a right basic man in a way general (UDHR) that punishment dead prohibited.[9] Inner core discussion from RI punishment dead in The UDHR perspective is No permitted or forbidden execution punishment dead, the UN considers punishment dead as punishment that is cruel, also, not human as per the All inclusive Statement of Common liberties Man and the Global Pledge on Common and Political Privileges (ICCPR) in Article 7 concerning prohibition punishment dead except that article 6 paragraph (2) explains that punishment dead Still applied in various countries and on implement it However, punishment dead the only can applied For crime special or heavy like genocide or terrorism. From follow Human Rights Perspective Humans are developing throughout the world, Indonesia has incorporated the UN UDHR into its constitution and laws Number 39 of 1999 concerning Human Rights Human. Apart from that, the government also formed the National Human Rights Committee Man in article 28A of the Constitution Republic of Indonesia after change (amendment) stated that Everyone has the right for life as well as the entitled maintain life and live. The option to live and protect his life normally lined up with fill Article 3 of the UDHR of the Association Countries. In the 1945 Constitution of the Republic of Indonesia in Article 28A exists the connection with Republic of Indonesia Regulation Number. 39 of 1999 concerning Common freedoms Human. In Part III article 9 makes sense of the Common liberties of Man and Fundamental Human Opportunities with clarification as follows:

- 1) everyone has the right to live, defend live, and improve level in his life;
- 2) everybody has the option to life tranquil, protected, quiet, blissful, and prosperous truly and intellectually; also, 3) everybody has the privilege to a climate of good and solid life.

Next Article 70 of the Law Republic of Indonesia Number 39 of 1999 concerning Common liberties People additionally makes sense of privileges and commitments, everybody should be dependent upon limitations laid out by regulation to guarantee acknowledgment and regard for the privileges and opportunities of others as well as to satisfy fair requests as per contemplations of ethics, security and request general in something public popularity based. In general, criminal death is defined as a form of suffering or causing torture and suffering for someone and violates conflicting norms with life human. There is a strong relationship between criminal death and punishment. Enhancement in matter sanctions, meanwhile punishment dead more addressed to a perpetrator follow crime, the society hopes that the culprit truly prosecuted.

Some crime in Indonesia is threatened with criminal death, including:

- a. Act criminal treason, listed in the Criminal Code Article 104 if killing president and vice president; Article 111 paragraph (2) if carrying out collaboration or connection with foreign countries so that happen war;

- b. Act criminal murder planning, listed in the Criminal Code Article 340, explains if with on purpose remove other people's lives.
- c. Act criminal corruption, listed in Constitution Number 31 of 1999 jo. Number 20 of 2001 in Article 2 paragraph (2) concerning Eradication Act Criminal Corruption, commit corruption in circumstances certain.
- d. Act criminal genocide and crime to human, listed in Constitution Number 26 of 2000 concerning Human Rights Humans, in article 36 regulates about genocide or extermination mass, that is the act carried out for kill or destroy mass or part from group nation, race, ethnicity, religious group. Article 37 explains crimes against humanity, such as systematic attacks directed against civilians.

### **3.3.1. Arrangement punishment dead according to Positive Law perspective in Indonesia**

In Law Number 39 of 1999 concerning Human Rights Man, verse 18 (1) states that any person arrested, detained, or sued considered do follow criminal entitled considered No guilty until proven the mistake in a way legitimate in something hearing court and granted all guarantee necessary laws for defense, appropriate with regulation legislation. Some people have an opinion that the principle presumption of No guilt only happens up front in the judge's court or not can applied at the level of investigation, though a number of constitutions enter it. This is due to the level of investigators, they can make an effort like arrest, detention, search, and investigation of someone, though there is a decision the court showed that somebody it's wrong and it's not a canceled. Consequently, the principle presumption No guilty considered a violation effort forced this. According to the opinion writer, this is wrong; for example, towards people with the status suspect or defendant, the Criminal Procedure Code uses the word " alleged " rather than the word " action ". Therefore, the word " allegedly " is used in the Criminal Procedure Code and regulations in other legislation as instruction that somebody is considered Not yet guilty If the court has not yet set he guilt and decision Not yet own strength law is still mandatory. Therefore, that's the principle presumption No guilty is always used in every judicial process mechanism criminal, of investigation until prosecution and trial. [11] The Criminal Code ( KUHP ) in article 10 contains about difference between the two kinds of criminal that is criminal principal and criminal addition, as follows:

- a. The main punishment consists of: 1) Death penalty; 2) Prison sentence; 3) Imprisonment sentence; 4) Fines
- b. Additional penalties consist of: 1) Denial of specific freedoms; 2) Seizure of specific merchandise; 3) Declaration of the Adjudicator's choice

Thus, criminal death is considered as criminal principle in law-positive Indonesia. Crimes regulated in the Criminal Code carry the death penalty, for example;

Article 104 of the Lawbreaker Code with respect to conspiracy to kill the head of state; in Article 111 section (2) concerning Welcoming Unfamiliar Nations to go after Indonesia; in Article 124 passage (3) concerning Giving help to the foe when Indonesia is in a condition of war; article 140 section (4) concerning Killing the top of a well disposed State; Article 140 passage (3) and Article 340 concerning planned murder; Article 365 passage (4) concerning Robbery with savagery by at least two individuals in a gathering around evening time through harm, etc, bringing about somebody experiencing serious injury or demise; Article 124

concerning empowering uproars, disobedience, etc between laborers in a climate of battle to safeguard the country;

To compare and see the evolution of thinking regarding the regulation of the death penalty in Indonesia, it would be useful to study the provisions contained in the new Draft Criminal Code as Jus Constituendum, regarding the execution of the death penalty through the following explanation: 1). carried out by a firing squad by shooting until death; 2). carry out in a special place; 3). Not imposed on children under eighteen years of age; 4). if a woman is pregnant then wait until or a mentally ill person is postponed until the mental illness is cured; 5). carried out with the approval of the president and the rejection of clemency by the President.

### **3.3.2. The death penalty from an International Human Rights perspective**

Criminal acts are included in serious criminal offenses whose punishment is punishable by the death penalty

1) Genocide, Dr. Raphael Lemkin first used the term genocide in 1944 (in Arie Siswanto, 2005: 48). The term comes from the Greek word "geno," meaning "race," and the Latin word "cidium," meaning "to kill." Although genocide has many different definitions and meanings, most definitions refer to both components of its etymology. Genocide is always associated with ethnic or racial killings. Ethnic cleansing, also known as genocide, is the act of expelling or exterminating a particular ethnic or religious group. The author argues that genocide can be associated with two things: objectively, it means mass extermination, and subjectively, it means that certain groups are targeted or targeted. However, there are still many definitions of genocide and differences within it. The Show on the Counteraction and Discipline of the Offense of destruction embraced by the UN General Gathering on 9 December 1948 gives a more extensive definition. The Convention on Genocide is an effort by the international community to eliminate or stop genocide, which is considered an international crime that is contrary to the objectives of the UN and the world's population, as per the order of the show and a wrongdoing as per worldwide regulation, in spite of the soul and goals of the UN, and denounced by common society.

### **3.4 Human Rights from the Perspective of Crimes Against Humanity**

Genocide in the French, British, and Russian governments used the term "crimes against humanity" as a category of international crime on May 28, 1915. These three countries emit statements together to curse Turkey's murderous actions more than One million Turks of origin from of Armenian descent. A statement together mentions the massacre of Armenians as a "crime to civilization and humanity". Constitution Court Nurenberg's War Crimes, set at the end of the Second World War, adds more codification to considered action as a " crime to civilization and humanity ". Constitution This state that " crime to humanity" includes action murder, enslavement, deportation, extermination, and action human others are done to resident civil, before or during war, or persecution on base politics, race or deep religion implementation or connection with crime whatever comes in jurisdiction court, okay or No violate law domestic country of place deed the done. Arrangements about the definition rape as a crime including cover slavery sexual, prostitution forced, pregnancy forced, sterilization force, and type violence the same sex heavy others. Opinion writer about crime humanity including attack systematic or widespread to resident civil.



In Indonesia explained that solutions to human rights violations through court specifically guided by Law no. 26 of 2000 concerning Human Rights Court Humans, Under Review from State Law, human rights courts are provided for perpetrator genocide and crimes against humanity. In many cases, violations of Human Rights Man or crimes against humanity are recorded abroad, especially in Indonesia, as the perpetrators have No processed law. Phenomenon impunity is when the leaders are suspected of being political and military involved in violation weight of Human Rights Humans involving leaders suspected political and military involved like genocide, crime humans, and crime war No on trial, law politics that have proven during one hundred years. In Indonesia also, the government take various policy to separate the Police from the Armed Forces with the objective of reducing the possibility of violence and violations of human rights Humans in the past were No arranged through the Constitution in a way special. Therefore, as \_ the result government emits various policies, including:

At the moment government President Habibie concluded bi ABRI functions through Presidential Decree April 1, 1999; the government furthermore issued MPR Decree No. VI/MPR/2000 concerning Separation of the Indonesian National Police and Army and MPR Decree No. VII/MPR/2000 concerning the role of the TNI and Police; Next on government President Abdurrahman Wahid (Gus Dur) issued Presidential Decree No. 98 of 2000 which regulates come back position of National Police as well as Presidential Decree No. 54 of 2001 concerning Organization and Work Procedures Police Republic of Indonesia; Then government issued Law No.2 of 2002 concerning Indonesian Police and Law no. 3 of 2002 concerning National Defense. [12] This a form of existence paradigm sensitivity social to something incident and the state also accommodates the people's demands to do something worthwhile effort \_ for Indonesian society.

Furthermore, War Crimes in Indonesian National Legal System and Wills Political Constitution Number 26 of 2000 concerning Human Rights Court Man according to law crime war in Indonesia since before independence, Govt The Dutch colonialists followed suit various convention law humanitarian and treaty international about crime war. However, there is debate about whether Indonesia inherited the provision law Dutch Colonial. Government Dutch colonialism in the Dutch East Indies established a crime war through Staatblad Number 44 of 1946 after Indonesia became independent. . [13] Provisions of the Criminal Code Military (KUHPM) and the Criminal Code Military (Criminal Code) more arrange forms crime threatening and detrimental politics \_ interest state military, moment this still it applies in Indonesia.

## **4 Conclusion**

Punishment dead Still used in Indonesia, regulated in Article 10 of the Criminal Code, and is considered as criminal principal. This thing supported by qualifications follows possible punishment categorized as or threatened with criminal death, like action treason, or encouraging foreign countries to attack the country. According to the Constitution on Human Rights, the man makes sense of that everybody ought to be dependent upon limitations laid out by regulation to guarantee acknowledgment and regard of the privileges and opportunities of others as well As to satisfy fair requests as per contemplations of ethics, security, and request, as a general rule, is something public vote based. Apart from that, the Draft Criminal Code also regulates criminal

deaths. Provision international about basic human, especially Article 3 of the UDHR, namely the right to life, conflicts with punishment, which is often called criminal death. In Indonesia explained that solution violation of Human Rights Man through court specifically guided by Law no. 26 of 2000 concerning Human Rights Court Man earmarked for perpetrator genocide and crime to humanity. Punishment comes from various perspectives from experts in law about rights civil and politics, activists ' perspectives basic man considered human rights violations due to including cruel and breaking laws rights life human.

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