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Effectiveness of Human Rights Protection in Indonesia's Constitutional System After the 1945 Amendments

Budiyono[(1)]
Faculty of Law, Lampung University, Indonesia.
Email: budiyono.1974@fh.unila.ac.id

Renaldy Eka Putra[(2)]
Faculty of Law, Lampung University, Indonesia.
Email: renaldy@fh.unila.ac.id

ABSTRACT

The protection of human rights is a primary pillar of a democratic rule of law. Although the amendments to the 1945 Constitution (1999–2002) significantly expanded human rights coverage within Chapter XA, problems such as violence by state apparatus, discrimination, and the shrinking space for freedom of expression remain persistent issues. This study aims to evaluate the effectiveness of human rights protection in Indonesia's constitutional system by examining the dissonance between the strengthening of constitutional norms and the reality of their institutional implementation. Using a juridical-normative approach enriched with qualitative analysis of constitutional texts, legislation, court rulings, and academic literature, this study finds that normative progress has not been followed by the strengthening of human rights enforcement agencies. Both the Constitutional Court and the National Commission on Human Rights (Komnas HAM) remain hindered by limited mandates and weak legal accountability mechanisms. The study also identifies a failure of legal harmonization at the regional level, which often results in regulations that contradict human rights principles. The novelty of this research lies in its synthetic analysis, which goes beyond a review of legal texts to examine the structural and institutional barriers that block the transformation of constitutional norms into law enforcement practice. The study thus offers a new way of mapping the gaps in human rights implementation in post-reform Indonesia. Its findings provide a framework for national legal reform and a reference for comparative constitutional law studies.

Keywords: *Amendment of the 1945 Constitution, Constitution, Constitutional System, Human Rights, Legal Reform.*

I. INTRODUCTION

The protection of human rights (*hak asasi manusia*, HAM) is a fundamental pillar of a democratic constitutional system (Creamer & Simmons, 2020). However, the reality in Indonesia shows that human rights violations remain persistent after the 1999–2002 constitutional amendments, indicating a gap between norms and implementation. Theoretically, human

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rights protection is rooted in constitutionalism and the substantive rule of law, which require limits on power to guarantee individual freedom. Even though Chapter XA of the 1945 Constitution has integrated these values, its effectiveness is hampered by incoherent institutional mechanisms and an imbalance in the roles of the branches of government.

A research gap remains that has not been explicitly formulated. The majority of previous studies on human rights protection in Indonesia tend to focus either on dogmatic constitutional text analysis or on partial institutional strengthening, without sufficiently examining the systemic interaction between constitutional norms and institutional practices. Recent national legal scholarship has highlighted the persistence of institutional fragmentation and weak coordination in the post-amendment constitutional framework, yet has not comprehensively conceptualized this condition as a form of *institutional dissonance* within the constitutional system (Mujib et al., 2025).

This research fills that gap by integrating a juridical-normative approach with empirical analysis to examine the structural obstacles that hinder the transformation of constitutional human rights norms into effective institutional practice (Reyhan et al., 2024). The aim is to offer a constitutional system framework that is more responsive to the principles of universal constitutionalism.

The imbalance in roles among the executive, legislative, and judicial branches in carrying out the mandate for human rights protection remains a critical issue. State institutions such as the Constitutional Court, the National Commission on Human Rights (Komnas HAM), and judicial bodies continue to face structural and political challenges that generate a gap between constitutional design and institutional reality. Socio-political factors, including polarization, corruption, and weak law enforcement, further complicate

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collective efforts to protect human rights. A thorough study is therefore needed to assess the extent to which post-amendment human rights standards have been fulfilled in accordance with the Constitution and international legal instruments.

Several previous studies have examined these dynamics. Ibrahim (2022) analyzed the role of the Constitutional Court in interpreting human rights provisions but did not sufficiently elaborate on inter-institutional dynamics. Meanwhile, Hidayat et al. (2024) highlighted the institutional strengthening of Komnas HAM without examining the constitutional system as a whole. Building on these gaps, this study demonstrates that although constitutional amendments have significantly strengthened human rights norms, their effectiveness has been constrained by institutional dissonance, limited institutional mandates, and the absence of strong oversight mechanisms. Weak accountability in law enforcement and a lack of regulatory synchronization constitute the primary obstacles to translating constitutional values into tangible practice. By examining these constraints, this study proposes a framework for strengthening a constitutional system that is more responsive to the principles of universal constitutionalism (Hidayat et al., 2024).

This research contributes by combining a normative-constitutional approach with an empirical analysis of Indonesia's constitutional system. Its distinctive feature is an assessment of human rights institutions within the constitutional framework as a whole. Unlike previous studies, it proposes the concept of the "constitutional implementation gap" as an analytical model that links normative guarantees on paper with institutional realities in practice. The interdisciplinary approach, which draws on constitutional law, human rights theory, and socio-political analysis, offers an integrated

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understanding of how Indonesia's constitutional system performs today.

This article aims to critically analyze the effectiveness of human rights protection following the amendments to the 1945 Constitution. Its primary focus is to examine the relationship between constitutional reforms and institutional changes, as well as their impact on the practical protection of human rights. Specifically, this study identifies factors that inhibit implementation and offers strategic recommendations to strengthen a constitutional system that is more responsive to the mandates of the Constitution and international law.

This study argues that although the constitutional amendments have brought significant normative changes, Indonesia's constitutional system has not fully supported the substantive realization of these rights. This problem arises from the lack of synchronization between constitutional norms, implementing legislation, and institutional enforcement mechanisms. The study further argues that strengthening human rights protection requires institutional reform and the restructuring of inter-institutional relations to ensure alignment between normative mandates and functional responsibilities.

The originality of this research lies in its use of the "constitutional implementation gap" model to examine the dissonance between theory and practice. The study contributes to the discourse on constitutional law reform in Indonesia. Its findings are expected to serve as a reference for policymakers, academics, and civil society actors in promoting a constitutional system that is more just, democratic, and oriented toward the substantive fulfillment of human rights. The analytical model also opens avenues for future research to evaluate constitutional effectiveness in terms of both textual guarantees and institutional resilience.

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II. RESEARCH METHODS

This study employs a qualitative research method with a juridical-normative approach focusing on legal synchronization and normative effectiveness (Wiraguna, 2024). To comprehensively address the research problem, the author applies four main approaches: (1) a statutory approach to examine Chapter XA of the 1945 Constitution, Law No. 39 of 1999 concerning Human Rights, and Law No. 26 of 2000 concerning Human Rights Courts; (2) a conceptual approach to analyze theories of constitutionalism and the rule of law; (3) a case approach to examine landmark decisions of the Constitutional Court; and (4) an institutional approach to evaluate the functional roles of human rights enforcement institutions, including the National Commission on Human Rights (Komnas HAM) and relevant judicial bodies.

The temporal scope of this research is explicitly limited to the period from 2002 to 2024, representing the phase of full implementation following the fourth amendment to the 1945 Constitution. This delimitation aims to capture contemporary constitutional dynamics and the evolution of human rights protection in Indonesia's state practice.

Data collection is conducted through a literature review that encompasses primary, secondary, and tertiary legal materials (Bexell et al., 2023). In addition to legal texts, secondary empirical data in the form of annual reports issued by Komnas HAM and annual reports from civil society organizations are utilized to enrich the contextual understanding of normative implementation in practice.

Data analysis is carried out using two principal analytical techniques: doctrinal interpretation and content analysis. Doctrinal interpretation is employed to examine the philosophical meanings underlying constitutional provisions and to analyze how constitutional justices construct legal reasoning

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in their decisions. Meanwhile, content analysis is applied critically to human rights institutions' reports and official documents to identify recurring patterns of violations and persistent institutional constraints.

With this methodological framework, the study moves beyond purely textual analysis and examines the "dissonance" between law as aspired to (*ius constituendum*) and law as applied in practice (*ius operatum*). The findings are expected to contribute to the renewal of constitutional law discourse and to serve as a reference for policymakers in formulating institutional reforms that are more responsive to the principles of universal constitutionalism in Indonesia.

III. RESEARCH RESULTS AND ANALYSIS

A. Expert Opinions on Human Rights

Human rights are fundamental rights inherent in every human being, which the state must respect, safeguard, and protect. According to Jimly Asshiddiqie, they are rights that attach to every person from birth and cannot be infringed by anyone (Asshiddiqie, 2022). Wong et al., meanwhile, emphasize that human rights are instruments of liberation from domination by arbitrary power and act as constraints on state power (Wong et al., 2021).

Another perspective comes from M. Hamilton, an international human rights expert, who states that human rights must be guaranteed in the constitution as a means of controlling the state and protecting individuals from arbitrary action by the authorities (Hamilton, 2020). Thus, both domestic and foreign experts agree that the protection of HAM should be an integral part of the constitutional system.

The amendment of the 1945 Constitution positioned human rights as explicit constitutional norms, thereby providing a legal foundation for

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individual claims and state obligations. The post-amendment Constitution places human rights as a parameter of the constitutionality of legislation and executive actions. The Constitutional Court (MK) assumes a central role as the guardian of the Constitution in reviewing laws that contradict human rights. This approach demands effective remedial instruments to ensure that constitutional rulings truly provide protection. Without strong enforcement mechanisms, constitutionally recognized rights remain vulnerable in practice (Yani, 2025). This constitutional positioning of human rights reflects the view of Indonesian legal scholars that constitutional recognition must be accompanied by coherent institutional responsibility to ensure effective protection of rights (Widyanti, 2023).

The protection of human rights should not be interpreted merely as a prohibition on state action (*negative obligations*), but also as the state's active responsibility (*positive obligations*) to fulfill economic, social, and cultural rights. This interpretation is consistent with the amended 1945 Constitution of the Republic of Indonesia, particularly Article 28H paragraph (1), which guarantees the right to welfare, a good and healthy environment, and health services, as well as Article 34 paragraphs (1)–(3), which affirm the state's responsibility for the care of the poor and abandoned children, the development of a social security system, and the provision of adequate health care facilities and public services. Accordingly, human rights protection within Indonesia's constitutional framework requires an active and progressive role of the state, oriented toward the substantive fulfillment of rights rather than merely limiting state power (Zanibar, 2018).

After the amendments, this dimension of positive obligations became clearer in constitutional rulings requiring state action. The need for resources, program policies, and public governance has become part of the fulfillment of

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constitutional rights. Implementation failures demand inter-institutional relations that ensure the realization of rights in the administrative domain. Therefore, the discourse on rights fulfillment has shifted from mere normative provisions to the practice of public governance.

The effectiveness of Constitutional Court rulings is an essential benchmark: when decisions remain declaratory without enforcement, citizens' rights are not concretely protected. Recent studies highlight bureaucratic barriers and fragmented authority among institutions that hinder the implementation of constitutional decisions. The recommended solutions include technical regulations for decision implementation, deadlines, and inter-institutional reporting mechanisms. Transparency in execution and institutional accountability are required so that rights affirmed by the Court can be restored. This shows that constitutional human rights protection depends on implementation networks, not merely written norms. Recent studies highlight bureaucratic barriers and fragmented authority among institutions that hinder the implementation of constitutional decisions, a condition also identified in constitutional law analyses published in *Yustisia*, which emphasize weak inter-institutional coordination as a major obstacle to effective human rights enforcement (Kania, 2015).

The use of *Perppu* (Government Regulations in Lieu of Law) presents risks to rights if it does not meet the requirements of urgency and proportionality. Constitutional analysis emphasizes that *Perppu* must be strictly reviewed by the Constitutional Court and balanced by ex-post legislative control. The standards of review include urgency, the absence of legislative alternatives, and proportionality in rights restriction. Without clear criteria, executive discretion through *Perppu* may erode constitutional rights guarantees. Therefore, constitutional interpretation of these criteria becomes

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an instrument of human rights protection after the amendments.

Environmental issues demonstrate how collective rights (such as the right to a healthy environment) can now be enforced through constitutional mechanisms. Recent Constitutional Court rulings have developed participatory standing, access to information, and public participation in environmental policymaking. This recognition links environmental rights with other rights, such as health and the livelihoods of indigenous communities. Effective protection requires harmonization between development policies and the state's obligation to preserve the environment (Arifin, Rahayu, et al., 2025). Thus, post-amendment human rights doctrine expands the domain of protection from individuals to socio-environmental ecosystems.

Political rights and access to public office have also undergone new constitutional interpretations, such as in cases concerning presidential candidacy thresholds. The Constitutional Court plays a mediating role between political stability and democratic openness, which guarantees the rights to vote and be elected. Rulings on candidacy requirements demand rational regulation and non-discrimination toward both candidates and voters. This balance is crucial to ensure that electoral design does not deprive certain groups of political opportunities. Through constitutional oversight, political rights can be protected without undermining stable governance.

Judicial system reform and strengthening the constitutional foundation of the prosecution service are relevant to guarantees of due process and victim protection. A prosecution service with a strong legal foundation and constitutional accountability is more likely to carry out its prosecutorial function without neglecting human rights. Recent studies suggest clarifying the role of the prosecutor in enforcing rulings and protecting victims' rights

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within the constitutional framework. Such arrangements prevent the misuse of prosecutorial power that could violate the rights of both defendants and victims. Therefore, reforming prosecutorial institutions is an integral part of the ecosystem of human rights protection.

Variations in procedural law practices and inconsistencies in judicial review rulings demand procedural harmonization to protect legal certainty. Procedural uncertainty may result in differing levels of human rights protection across regions or cases. Standardizing formal and material review practices helps ensure consistent protection of rights. Moreover, transparent constitutional reasoning strengthens the legitimacy of rulings as instruments of human rights protection. Improving procedural practices is a preventive step to reduce violations of both administrative and substantive rights.

Judicial ethics and internal supervisory mechanisms are crucial to safeguarding the independence and integrity of the Constitutional Court as a guardian of human rights. Cases related to judicial ethics highlight the need for transparent mechanisms for supervision and enforcement of sanctions. The integrity of the constitutional judiciary directly influences public trust in human rights protection.Strengthening codes of ethics, public complaint procedures, and disciplinary enforcement are part of the architecture of human rights protection. Balancing independence with accountability ensures rulings that are fair and pro-human rights.

B. Dynamics of the Constitutional System and Human Rights Before the Reform Era in Indonesia

Before the reform era, Indonesia's constitutional system tended to be authoritarian and centralized. The 1945 Constitution, before its amendment, contained only a few human rights provisions, namely Articles 27 and 28, without adequate guarantees of implementation. The New Order regime used

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national security and political stability as justifications to curb civil and political freedoms, a pattern commonly identified in authoritarian constitutional practices that subordinated human rights protection to regime control (Yudha Chandra Arwana, 2019), including restrictions on press freedom, suppression of political opposition, and repressive actions against civil society activism (Kusnadi, 2017). During the New Order period, Indonesia's political system was authoritarian with high control over civil society. Human rights protection was symbolic, with no real implementation. The National Commission on Human Rights (Komnas HAM) was established in 1993, but with limited authority.

Prior to the 1998 *Reformasi*, Indonesia's constitutional framework concentrated executive authority in the President, limiting institutional checks on power. The 1945 Constitution, as interpreted then, enabled a strong presidency that absorbed legislative and administrative prerogatives. This structural concentration reduced opportunities for independent oversight by the legislature and judiciary. Consequently, constitutional guarantees for civil and political rights remained formal rather than effectively enforceable. Legal instruments and administrative practice often subordinated individual rights to regime stability and development goals. Scholarly studies trace these features as central causes of the systemic rights deficits of the pre-Reform era (Rahman et al., 2024).

The absence of a codified bill of rights and of an independent constitutional court left citizens with limited legal remedies against state infringement. The Supreme Court's jurisdiction was limited to cassation, not to judicial review of legislation for constitutionality. Without a dedicated body to adjudicate constitutional disputes, violations of fundamental rights were rarely redressed in court, particularly in cases involving gross human rights

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violations where domestic judicial mechanisms were structurally incapable of delivering accountability (ufran, 2019). Regimes used broadly worded statutes—such as emergency or security laws—to curtail dissent and civil liberties. Consequently, legal protections were contingent on executive discretion rather than on enforceable constitutional norms. Comparative legal analyses emphasize that this judicial vacuum undermined both the rule of law and human rights protection (Crouch, 2021).

Political pluralism was tightly constrained by a limited-party architecture dominated by the ruling party and its affiliates. Elections functioned more as mechanisms of legitimation than as instruments of accountable representation. Party regulation and state patronage curtailed competitive political mobilization and opposition organizing. The resulting democratic deficit restricted citizens' political participation and the realization of political rights. Scholars argue that such controlled pluralism entrenched elite interests and weakened civic checks on power. These dynamics created a political environment inhospitable to independent civil society and dissent (Yani, 2025).

Press freedom was severely limited: licensing regimes, censorship, and punitive measures suppressed investigative journalism. State control over media outlets blocked reliable reporting on abuses and curtailed public debate. Without an autonomous press, exposing rights violations and mobilizing remedies became difficult. Journalists and critics risked prosecution, detention, or intimidation for challenging official narratives. This constricted information environment reinforced impunity for abuses and limited democratic accountability. Research highlights how media repression shaped public perception and stifled reformist pressure (Wahyuni et al., 2024).

Security institutions—the police, intelligence agencies, and military—

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enjoyed expansive legal and de facto powers. These organs frequently operated with limited transparency and few effective accountability mechanisms. Military involvement in civilian governance further complicated efforts to hold security actors responsible. Authorities used security laws to criminalize political activity and to detain perceived opponents. Documented abuses included arbitrary detention, enforced disappearances, and unlawful use of force. Historical and legal scholarship emphasizes the central role of security prerogatives in preserving authoritarian order (Rahman et al., 2024).

Developmentalist policies prioritized rapid economic growth, often at the expense of property and land rights. Large-scale projects and state-led industrialization resulted in forced evictions and inadequate compensation for affected communities. Indigenous peoples and rural populations disproportionately bore the social costs of those policies. The marginalization of socio-economic rights revealed the limits of constitutional protection in the face of state interests. Academic studies critique the model that treated rights as secondary to economic objectives. Legal reformers later sought mechanisms to reconcile development with rights protection in post-1998 reforms (Putra & Oktaviana, 2025).

State discourse frequently framed human rights as external or Western concepts incompatible with national values. This framing legitimized selective engagement with international norms and delayed treaty ratification. Official rhetoric emphasized sovereignty and unity over universal human rights obligations. Nevertheless, international awareness and pressure gradually influenced domestic reform debates by the 1990s. Transnational advocacy and comparative models provided reformist actors with legal and normative resources. Scholars note the tension between nationalist narratives and emerging rights-based mobilization before *Reformasi* (Siburian, 2022).

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Religious freedom was limited to officially recognized faiths; unregistered belief systems often faced discrimination. State policies and societal pressures constrained the full enjoyment of freedom of religion and belief. Institutional favoritism toward recognized religions produced inequalities in legal protection. These dynamics undermined constitutional commitments to equality and non-discrimination. Analyses show that religious regulation became a vehicle for social control rather than pluralism. Post-Reform debates later sought to expand protection for religious minorities and heterodox communities (Wahyuni et al., 2024).

Local governance was subordinated to centralized authority, leaving regions with minimal autonomy or resource control. Centralized decision-making produced policy mismatches and governance deficits at the local level. Communities lacking institutional voice experienced gaps in basic services and legal protection. The lack of regional empowerment exacerbated socio-economic disparities across the archipelago. Decentralization reforms after 1998 responded directly to these structural failings of the pre-Reform system. Scholars link regional marginalization to long-term inequalities traceable to centralized constitutional design.

Civil society activism, though repressed, gradually formed networks of lawyers, students, and NGOs challenging authoritarian practices. These actors documented abuses, mobilized public opinion, and developed legal critiques of state power. The accumulation of grassroots pressure contributed to the mass mobilizations of 1998. Academic literature credits civil society's documentation and legal work as instrumental in catalyzing constitutional reform. This bottom-up pressure revealed both the limits and possibilities for rights contention under repression. Their strategies later informed institutional redesigns in the post-Reform constitutional order (Crouch, 2021).

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Komnas HAM was established in 1993 as a response to domestic and international scrutiny of human rights practices. Initially, the commission lacked prosecutorial powers and depended on state cooperation for enforcement. Its limited mandate constrained effective remedies for victims of abuses during the pre-Reform era. Nevertheless, Komnas HAM played an important role in documenting violations and raising public awareness. Scholars regard it as an early institutional attempt to embed human rights within state structures. Its evolution exemplifies the incremental institutionalization of rights preceding constitutional amendments (Rahman et al., 2024).

Legal instruments were often applied selectively, producing inconsistent enforcement and legal uncertainty for citizens. Regulations that curtailed rights were enforced variably depending on political context and official discretion. This arbitrariness eroded public trust in legal institutions and the rule of law. Analyses of pre-Reform jurisprudence reveal patterns of discretionary application of laws against dissidents. Addressing these procedural inconsistencies became a priority for constitutional reformers after 1998. Reform proposals emphasized predictability, transparency, and judicial accountability to safeguard rights (Siburian, 2022).

Transitional justice demands emerged from documented abuses, including calls for truth commissions and reparations. Victims and activists sought institutional responses to past violations as part of national reconciliation. The pre-Reform absence of accountability mechanisms left many abuses unresolved and socially divisive. Post-1998 debates about transitional justice reflected the need to address structural causes of rights violations. Legal scholars emphasize that accountability measures are essential for durable democratic consolidation. The legacy of unredressed abuses

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shaped subsequent institutional designs and human rights policies (Putra & Oktaviana, 2025).

Educational and civil institutions were co-opted to instill deference to authority and discourage rights-based dissent. State narratives prioritized unity, development, and anti-communism, which framed civic discourse. This ideological apparatus further constrained the social foundations for human rights advocacy. Only in the later 1990s did counter-narratives and rights discourse gain wider traction among students and professionals. Cultural change, alongside institutional reform, proved necessary for deeper rights consolidation. Scholarly work highlights the interplay between political culture and constitutional design in pre-Reform Indonesia.

The pre-Reform constitutional order thus combined executive dominance, limited judicial remedies, constrained civil liberties, and centralized governance. These structural features produced a wide gap between formal legal norms and everyday realities of rights enjoyment. The mass movement of 1998 and subsequent amendments sought to close that gap by constitutionalizing rights and checks and balances. Understanding pre-Reform dynamics is essential to evaluate the successes and limits of post-1998 reforms. Contemporary scholarship continues to trace the historical roots of current rights challenges.

Table 1. Number of Human Rights Violation Cases in Indonesia

No	Human Rights Violation Case	Era	Brief Description
1	1965 Tragedy	Old Order	Arrests, mass killings, and discrimination against individuals suspected of links with the Indonesian Communist Party (PKI).

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2	Tanjung Priok Tragedy	New Order	Shooting of demonstrators demanding justice and freedom of expression.
3	Marsinah Case	New Order	Murder of a labor activist who was fighting for workers' rights.
4	Forced Disappearance of Activists (1997–1998)	Reform era	Disappearance of several pro-democracy activists, allegedly carried out by security forces.
5	East Timor Violations	New Order	Violence and gross human rights violations during East Timor's integration and independence referendum.
6	Aceh Conflict	New Order–Reform	Serious violations such as killings and torture during the armed conflict in Aceh.
7	May 1998 Tragedy	Reform era	Mass violence including killings, rapes, and looting in the lead-up to the fall of the New Order regime.

Source: Agus (2020)

Table 1 shows that numerous human rights violations have occurred throughout Indonesia's history. The enforcement of human rights law in Indonesia has faced various challenges over time. Significant human rights violation cases have revealed the weaknesses in efforts to achieve justice for the people. One major case during the Old Order era was the 1965 tragedy, which marked the largest human rights violation in modern Indonesian history. Thousands to millions of people were arrested, tortured, and killed on suspicion of being associated with the Indonesian Communist Party (PKI). Discrimination against the survivors and their descendants continued for decades. Although the government has made efforts toward reconciliation,

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these steps are widely regarded as insufficient in restoring the victims' rights (Boediningsih & Dermawan, 2023).

Next is the Tanjung Priok tragedy during the New Order era. The shooting of demonstrators demanding freedom of expression had a profound impact, yet the case remains inadequately addressed to this day. The incident involved the excessive use of force by security personnel against unarmed civilians, reflecting the lack of legal protection for the right to life and freedom of speech (Drexler, 2022).

The murder of labor activist Marsinah, also during the New Order, serves as further evidence of weak legal protection for labor rights defenders. Marsinah was killed after leading a labor protest demanding wage increases. The investigation into her case reached a dead end, and the true perpetrators were never brought to justice. This case illustrates the low priority given to the protection of workers' rights in Indonesia (Iannone et al., 2025).

The forced disappearance of pro-democracy activists in 1997–1998 further highlighted the shortcomings in ensuring human rights protection. Several outspoken activists were reported missing under suspicious circumstances. Strong suspicions pointed to the involvement of state security forces, yet only a few perpetrators were prosecuted. This phenomenon raised serious concerns about the lack of transparency and accountability in law enforcement, particularly in cases involving state actors (Setiawan, 2022).

The violence in East Timor during the integration and independence referendum period was another glaring example of gross human rights violations in Indonesia. This involved mass killings, rape, and property destruction by armed groups. Despite international investigations, many perpetrators remain free without facing legal consequences. This event shows the need for stronger coordination between the national legal system and

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international mechanisms to address serious human rights violations (Marzuki & Ali, 2023).

The armed conflict in Aceh, which lasted for decades, also had severe consequences for human rights. Violations included killings, enforced disappearances, and torture. The Indonesian government has attempted to resolve the conflict through peace negotiations and the granting of special autonomy. However, the social scars resulting from human rights abuses during the conflict remain deeply felt by the Acehnese people (Lee, 2020).

The May 1998 tragedy was one of the most prominent moments in the history of human rights violations in Indonesia. Widespread violence—including killings, looting, and rape against certain ethnic groups—occurred in the lead-up to the fall of the New Order regime. This tragedy exposed not only the weaknesses of the legal system but also the government's failure to protect the fundamental rights of its citizens during a national crisis. Although the National Commission on Human Rights (Komnas HAM) has conducted investigations, justice for the victims has yet to be fully realized (Salman et al., 2023).

These various human rights violations highlight the urgent need for reform in Indonesia's legal system. Transparency, accountability, and the protection of citizens' fundamental rights must be prioritized in every law enforcement effort. In addition, public education on the importance of human rights and the training of law enforcement officers are crucial steps in preventing future violations. This research aims to identify the main obstacles to human rights law enforcement and to provide concrete recommendations for improving this situation. The findings are expected to make a real contribution to strengthening human rights protection and achieving justice for all Indonesian citizens.

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C. Human Rights Protection after the Amendment of the 1945 Constitution: Normative Guarantees, Institutional Performance, and the Implementation Gap

The amendments to the 1945 Constitution of the Republic of Indonesia, carried out in four stages between 1999 and 2002, marked a fundamental turning point in Indonesia's constitutional history, particularly with regard to the protection of human rights (Nggilu et al., 2023). The most significant change was the incorporation of Chapter XA on Human Rights (Articles 28A–28J), which explicitly regulates civil, political, economic, social, and cultural rights as an integral part of constitutional norms. This development repositioned human rights from merely moral aspirations or political policies to constitutionally guaranteed rights that are binding on all branches of state power.

Nevertheless, the strengthening of constitutional norms does not automatically ensure the effective protection of human rights in practice (Butt & Murharjanti, 2022). To assess the extent to which Indonesia's post-amendment constitutional system has been able to realize substantive human rights protection, this section employs a three-tier analytical framework, consisting of: (1) the level of constitutional norms, (2) the institutional level, and (3) the level of implementation. This framework enables a systematic identification of the gap between normative guarantees and the empirical realities that persist within constitutional practice.

D. The Normative Level: The Constitutionalization of Human Rights and Normative Progress

At the normative level, the amendments to the 1945 Constitution have brought about significant progress. Chapter XA provides a relatively comprehensive formulation of human rights that is consistent with

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international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These provisions encompass the right to life, freedom of religion and belief, freedom of expression, the right to personal security, the right to work and to a decent livelihood, as well as the right to a good and healthy environment (Abdurrachman Satrio, 2023).

From a theoretical perspective, the constitutionalization of human rights reflects a paradigm shift from a power-based state (*machtstaat*) toward a democratic state governed by the rule of law (*democratische rechtsstaat*). Human rights are positioned both as limitations on state power and as objectives of state governance. In this context, the constitution functions not merely as a political document but also as a normative instrument that structures the relationship between the state and its citizens based on respect for human dignity (Perbawa, 2023).

Nevertheless, constitutional norms are formulated in general terms and require further elaboration through legislation and law enforcement practices. This is where problems of synchronization between constitutional norms and implementing regulations emerge. Various studies indicate that not all sectoral laws are drafted with consistent reference to constitutional human rights standards. This lack of synchronization constitutes one of the main sources of the weak effectiveness of human rights protection in practice. This normative gap has also been identified in post-amendment Indonesian legislation, where several statutory regulations fail to consistently operationalize constitutional human rights guarantees, resulting in fragmented legal protection and weak normative coherence (Moh. Fadhil, Herman, 2024).

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E. The Institutional Level: The Role of the Constitutional Court, Komnas HAM, and Judicial Bodies

At the institutional level, the amendments to the 1945 Constitution led to the establishment and strengthening of key institutions for human rights protection, particularly the Constitutional Court and the National Commission on Human Rights (Komnas HAM). Through its authority to conduct judicial review of statutes against the Constitution, the Constitutional Court serves as the guardian of constitutional supremacy and the protector of citizens' constitutional rights (Marzuki & Ali, 2023).

A number of Constitutional Court decisions demonstrate its tangible contribution to human rights protection. Decisions No. 006/PUU-I/2003 concerning the Broadcasting Law and No. 002/PUU-I/2003 regarding the Election Law, for example, illustrate how the Court annulled legal norms deemed to violate freedom of expression and political participation rights. As of 2024, dozens of Constitutional Court decisions have been directly or indirectly related to human rights issues, particularly in the areas of political rights, civil liberties, and procedural justice.

Nevertheless, in quantitative terms, the number of decisions that explicitly address human rights remains relatively limited compared to decisions in other constitutional domains, such as election result disputes and inter-institutional authority conflicts. This indicates that the justiciability of human rights within Indonesia's constitutional practice continues to face constraints, both in terms of public access to the Constitutional Court and the Court's review orientation, which remains predominantly political-electoral in nature (Santoso & Liliyana, 2021).

Komnas HAM also plays an important role within the institutional architecture of human rights protection. Following the constitutional

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amendments, its position has been strengthened as an independent body with authority to conduct monitoring, investigations, and advocacy related to human rights. Annual reports issued by Komnas HAM consistently reveal patterns of human rights violations, including violence by state apparatuses, discrimination against minority groups, and restrictions on freedom of expression.

However, the limited scope of Komnas HAM's authority—particularly the absence of binding prosecutorial powers—often results in its recommendations not being effectively implemented. Its reliance on the political will of other state institutions renders Komnas HAM's function more moral and persuasive than coercive. This condition demonstrates that strengthening human rights protection requires not only strong norms and institutions but also an effective and mutually reinforcing design of institutional authority.

F. The Implementation Level: Enforcement Challenges and Effectiveness Indicators

At the level of implementation, the gap between constitutional norms and the actual enforcement of human rights becomes increasingly evident. Annual reports issued by Komnas HAM indicate that despite the strengthening of the normative framework, human rights violations continue to occur with relatively recurring patterns. Torture, restrictions on freedom of expression, the criminalization of activists, as well as agrarian and environmental conflicts remain highly persistent issues from year to year (Heryanto et al., 2024). This recurring pattern of violations confirms that constitutional guarantees alone are insufficient without effective enforcement mechanisms and institutional commitment (Bangun, 2018).

Another indicator of weak implementation is the low level of regulatory

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harmonization. Various studies have identified hundreds of regional regulations that contradict the principles of non-discrimination and equality before the law as guaranteed by the 1945 Constitution and international human rights instruments. This condition demonstrates that decentralization, while providing space for policy innovation, also creates opportunities for the fragmentation of human rights standards (Irene Istiningsih Hadiprayitno, 2010).

Furthermore, the effectiveness of Constitutional Court decisions largely depends on the compliance of the executive and legislative branches. In practice, not all Constitutional Court rulings are implemented promptly or consistently. Bureaucratic resistance, weak oversight mechanisms, and the absence of clear sanctions for non-compliance risk reducing constitutional decisions to merely declaratory norms. This situation reinforces the existence of a constitutional implementation gap, in which rights are normatively guaranteed but fail to materialize in practice.

G. Analytical Synthesis: The Disjunction between Norms, Institutions, and Implementation

Based on the three-tier analysis, it can be concluded that human rights protection after the amendment of the 1945 Constitution is characterized by a paradoxical condition. On the one hand, Indonesia has achieved significant normative progress through the constitutionalization of human rights and the establishment of human rights institutions. On the other hand, the effectiveness of human rights protection remains constrained by a disjunction between constitutional norms, institutional performance, and implementation practices (Malik et al., 2021).

This disjunction is not solely attributable to weaknesses in normative formulation, but rather to insufficient inter-institutional coordination, weak

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enforcement mechanisms, and shortcomings in governance quality. Accordingly, strengthening human rights protection cannot rely merely on textual legal reforms but must be accompanied by institutional reform, regulatory harmonization, and enhanced accountability in law enforcement (Nugraha, 2023).

H. Implications for the Strengthening of Constitutionalism

These findings indicate that the future of human rights protection in Indonesia depends largely on the constitutional system's capacity to bridge the gap between normative guarantees and empirical realization. Strengthening compliance mechanisms for Constitutional Court decisions, expanding and sharpening the mandate of Komnas HAM, and enhancing public constitutional literacy constitute strategic agendas that are inseparable from democratic consolidation (Tømte & Riyadi, 2024).

Therefore, human rights protection after the amendment of the 1945 Constitution should be understood as a dynamic and continuous process. While the Constitution provides a normative foundation, its effectiveness is ultimately determined by institutional resilience and the quality of implementation. Without substantial improvements at these levels, human rights protection risks remaining a constitutional promise rather than a lived reality for citizens (Rommy Patra, 2025).

IV. CONCLUSIONS

This study concludes that the protection of human rights within Indonesia's constitutional system following the amendment of the 1945 Constitution has demonstrated significant normative progress, yet has not been fully transformed into effective and substantive human rights protection. The principal finding of this research confirms the existence of a constitutional

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implementation gap, namely a structural disparity between constitutional guarantees, institutional performance, and the realities of implementation in practice.

From a normative perspective, the incorporation of Chapter XA (Articles 28A–28J) into the 1945 Constitution is an important milestone in the constitutionalization of human rights in Indonesia. This chapter provides formal constitutional guarantees for civil, political, economic, social, and cultural rights, while positioning human rights as an integral component of constitutional supremacy. This normative innovation marks a shift in the status of human rights from moral and political values to constitutionally binding rights applicable to all branches of state power. Nevertheless, the general character of these constitutional provisions necessitates further legislative elaboration and consistent operational mechanisms in order to function effectively.

At the institutional level, this study finds that the Constitutional Court and the National Commission on Human Rights (Komnas HAM) play strategic roles within the post-reform architecture of human rights protection, yet remain constrained by suboptimal institutional design. The Constitutional Court has contributed to the protection of constitutional rights through judicial review, but the number of decisions substantively oriented toward human rights remains relatively limited, and their implementation largely depends on the compliance of other branches of government. Meanwhile, Komnas HAM performs an essential role in monitoring and advocacy; however, the weak binding force of its recommendations and the absence of direct enforcement authority significantly limit its institutional effectiveness.

From the perspective of implementation, this research demonstrates that legal harmonization remains a serious challenge. The proliferation of regional

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regulations that contradict the principles of non-discrimination and equality before the law reflects weak vertical control within Indonesia's decentralized governance system. This condition reinforces a tendency toward declarative constitutionalism, in which rights are normatively guaranteed but fail to materialize fully in practice.

Based on these findings, this study recommends, at the policy level, the establishment of a National Human Rights Enforcement Council as a cross-institutional coordinating mechanism. Such a body is expected to ensure regulatory harmonization, strengthen compliance with Constitutional Court decisions, and facilitate the effective follow-up of Komnas HAM's recommendations.

Constitutional human rights protection in Indonesia thus remains in a transitional phase, moving from declarative constitutionalism toward transformative constitutionalism, which requires the simultaneous and sustained strengthening of norms, institutions, and implementation practices.

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