



## REFORMULATION OF THE INSTITUTIONAL FUNCTIONS AND AUTHORITIES OF THE NATIONAL COMMISSION ON HUMAN RIGHTS

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### **Abstract:**

The handling of serious human rights violations has become a strategic and prioritized issue for the National Commission on Human Rights (Komnas HAM). This conceptual article aims to evaluate law enforcement efforts regarding cases of serious human rights violations handled by Komnas HAM and identify the obstacles and challenges faced in the process of resolving these cases. The research findings indicate that Komnas HAM has completed investigations into 12 cases of serious human rights violations and forwarded them to the Attorney General's Office as the investigator and public prosecutor. However, the legal process for these cases has stagnated, especially those already decided by the Ad Hoc Human Rights Court, such as the cases of Timor Timur, Tanjung Priok, and Abepura, where the defendants were eventually acquitted. The main challenges faced are the limited willingness and capacity of the Indonesian State to resolve cases of serious human rights violations. Additionally, weaknesses in legal aspects and the political will of the Government and Law Enforcement Agencies also influence the law enforcement process concerning serious human rights violations. Therefore, the novelty offered lies in the importance of a comprehensive evaluation of respect, protection, and fulfillment of human rights as a critical step to enhance the effectiveness of law enforcement regarding serious human rights violations. A reassessment of strengthening Komnas HAM's authority is required to ensure legally binding measures and clear consequences for those who do not comply with Komnas HAM's recommendations.

**Keywords:** Institutional Functions; Human Rights; Authority.

### **Abstrak:**

Penanganan pelanggaran HAM yang berat telah menjadi isu strategis dan prioritas bagi Komisi Nasional Hak Asasi Manusia (Komnas HAM). Artikel ini merupakan artikel konseptual yang memiliki tujuan untuk mengevaluasi upaya penegakan hukum terhadap kasus-kasus pelanggaran HAM berat yang telah ditangani oleh Komnas HAM, serta untuk mengidentifikasi kendala dan tantangan yang dihadapi dalam proses penuntasan kasus-kasus tersebut. Hasil penelitian menunjukkan bahwa Komnas HAM telah menyelesaikan penyelidikan terhadap 12 kasus pelanggaran HAM berat dan meneruskan prosesnya kepada Kejaksaan Agung sebagai penyidik dan penuntut umum. Namun, proses hukum untuk kasus-kasus tersebut mengalami stagnansi, terutama yang telah diputus oleh Pengadilan HAM Ad Hoc seperti kasus Timor Timur, kasus Tanjung Priok, dan kasus Abepura, dimana terdakwa akhirnya dibebaskan. Kendala utama yang dihadapi adalah keterbatasan kemauan dan kemampuan Negara Indonesia dalam menuntaskan kasus-kasus pelanggaran HAM berat. Selain itu, kelemahan dalam aspek hukum dan political will Pemerintah dan Lembaga Penegak Hukum juga mempengaruhi proses penegakan hukum dalam konteks pelanggaran HAM berat. Untuk itu novelty yang ditawarkan adalah pentingnya evaluasi menyeluruh dalam penghormatan, perlindungan, dan pemenuhan hak asasi manusia diakui sebagai langkah yang kritis dalam meningkatkan efektivitas penegakan hukum terhadap pelanggaran HAM berat. Perlu dilakukan kajian ulang mengenai penguatan kewenangan Komnas HAM

*untuk memastikan kekuatan hukum yang mengikat dan konsekuensi yang jelas bagi pihak yang tidak mematuhi rekomendasi Komnas HAM.*

**Kata Kunci:** Fungsi Kelembagaan; Hak Asasi Manusia; Kewenangan.

## **A. Introduction**

Human rights are fundamental rights that inherently belong to every human being, universally and enduringly, and as such, they must be protected, respected, upheld, and not be disregarded, diminished, or taken away by anyone. In essence, human rights refer to the rights inherent to every individual, regardless of race, religion, gender, or social status. The principles of human rights serve as moral and legal guidelines for the international community in the effort to safeguard the dignity and freedom of every individual. (Santoso, 2004)

Issues related to human rights have long been the focus of the international community. International legal instruments on Human Rights are agreements or conventions signed and ratified by countries at the international level. The purpose of these instruments is to protect, recognize, and guarantee the basic rights of every individual, irrespective of race, religion, or nationality. International legal instruments on Human Rights encompass various declarations, treaties, and protocols that have been adopted by the United Nations (UN) and other international organizations. (Karisma, 2022), One of the most well-known international Human Rights instruments is the Universal Declaration of Human Rights, adopted by the UN on December 10, 1948. (Zandy, 2019) This declaration sets forth the basic rights that must be respected and acknowledged by all UN member states. Its content includes civil and political rights, economic, social, and cultural rights, as well as collective rights and special rights for vulnerable groups, such as women, children, and persons with disabilities. (Elkins & Ginsburg, 2022)

Furthermore, there are two International Covenants on Human Rights adopted in 1966, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, (“International Covenant on Civil and Political Rights,” 1988) and Cultural Rights. Both covenants form part of the International Bill of Human Rights along with the Universal Declaration. The Covenant on Civil and Political Rights recognizes civil and political rights such as freedom of speech, freedom of religion, and the right to justice, while the Covenant on Economic, Social, and Cultural Rights acknowledges economic, social, and cultural rights such as the right to work, education, and health. (Ssenyonjo, 2017) International instruments on Human Rights have also addressed specific rights or special circumstances. Examples of these are the Convention on the Rights of the Child adopted in 1989 (Matthews et al., 2021) and the Convention on the Elimination of All Forms of Discrimination Against Women adopted in 1979. (Pietropaoli, 2019)

These international legal instruments on Human Rights play a crucial role in protecting and promoting the fundamental rights of every individual on a global level and monitoring the implementation of these rights by member states. They reflect the international community's commitment to respect and protect Human Rights as universal principles that are non-negotiable.

In the context of the Republic of Indonesia, the commitment to Human Rights (HAM) is still minimal, especially during the New Order regime, where human rights were not upheld, and many human rights violations were perpetrated by the Government. After the fall of the New Order regime, the issue of human rights in

Indonesia became a concern and became one of the reform agendas,(Azis, 2019) The State had to be present in providing respect, protection, enforcement, and promotion of human rights, which was then codified in Presidential Decree (Keppres) No. 129 of 1998 dated August 15, 1998, regarding the National Action Plan for Indonesian Human Rights. Following the issuance of the Keppres, the People's Consultative Assembly of the Republic of Indonesia issued Decree No. XVII/MPR/1998 on Human Rights, which was ratified on November 13, 1998. The decree assigned the State's Higher Institutions and all Government apparatuses to respect, uphold, and disseminate the understanding of human rights to the entire society. Additionally, it mandated the ratification of various United Nations human rights instruments, as long as they were in line with Pancasila and the 1945 Constitution.(Muni, 2020)

Several changes were made to affirm and enforce human rights in Indonesia, such as incorporating human rights into a separate chapter in the amended 1945 Constitution, specifically Articles 28A to 28J. Furthermore, the passage of Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts further solidified the commitment of the State, especially the Government, to provide protection, promotion, enforcement, and fulfillment of human rights for its citizens.

Initially, the National Commission on Human Rights (Komnas HAM) was established through Presidential Decree No. 50 of 1993. However, in its development, since 1999, the existence of Komnas HAM was based on laws, namely Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts. The authority of Komnas HAM expanded, no longer merely serving as an institution to raise awareness of HAM or receive complaints of human rights violations and mediate disputes. Instead, Komnas HAM has become a part of the criminal justice system, acting as an investigator in cases of severe human rights violations.(Nawawi, 2018)

The existence of the National Commission on Human Rights (Komnas HAM) in Indonesia is of paramount importance as an independent institution tasked with monitoring, protecting, and promoting human rights in the country. Komnas HAM was established based on Law No. 39 of 1999 and has become an integral part of Indonesia's efforts to comply with human rights standards and principles at the national and international levels. However, despite playing a crucial role in addressing human rights violations, Komnas HAM faces various limitations in handling cases of human rights violations in Indonesia. Some of these limitations are as follows:

- a) **Limited Authority and Investigative Capacity:** Despite being a government institution, Komnas HAM's authority is often restricted. For instance, in the investigation of human rights violation cases, Komnas HAM does not have the same investigative powers as the police or the prosecution. This hampers their efforts to gather evidence and obtain information necessary to uncover the truth in these cases.
- b) **Resource Constraints:** Komnas HAM also faces resource limitations, both in terms of budget and personnel. These constraints affect Komnas HAM's ability to conduct investigations and monitoring effectively for human rights violations throughout Indonesia.
- c) **Challenges in Enforcing Recommendations:** Although Komnas HAM has the authority to provide recommendations on human rights violation cases, the government does not always comply or follow up on these recommendations.

This often leads to unsatisfactory resolution of human rights violation cases and presents challenges for Komnas HAM in ensuring justice for the victims.

- d) **Political and Security Factors:** Komnas HAM is often confronted with political pressure and security issues in handling human rights violation cases. Some cases involve parties with political or military power, which can hinder Komnas HAM's efforts to seek truth and justice.
- e) **Lack of Public Awareness:** In addition to various institutional limitations, public awareness of the importance of human rights and the role of Komnas HAM in protecting their rights still needs to be raised. A lack of awareness among the public may result in insufficient support or endorsement for Komnas HAM's efforts to handle human rights violation cases.

Based on the aforementioned obstacles, this research aims to examine the challenges in the existence of Komnas HAM in Indonesia. This study is considered necessary to provide breakthroughs in terms of strengthening Komnas HAM's authority and institutional capacity. It is hoped that these breakthroughs will create a more credible, accountable, and just enforcement of human rights for all parties involved.

## **B. Problem Formulation**

Based on the background above, this research will focus on the discussion determined in the problem formulation, which includes the following problem formulation:

1. How is the institutional strengthening of Komnas HAM in Indonesia at present?
2. How is the enhancement of the authority possessed by Komnas HAM in Indonesia at present?

## **C. Discussion**

The National Commission on Human Rights (Komnas HAM) is an institution with the authority to receive complaints regarding human rights violations in Indonesia. As an independent body established under Law No. 39 of 1999 on Human Rights, Komnas HAM plays a crucial role in protecting, monitoring, and promoting human rights in Indonesia. In carrying out its functions, Komnas HAM provides a facility for the public to submit complaints related to alleged human rights violations that occur at various levels and sectors. The public can file complaints directly with Komnas HAM if they believe their human rights have been violated, either by specific parties, including government authorities, or by private companies or entities. (Laksana et al., 2022)

At present, the public has shown courage and awareness of their rights as citizens by filing complaints regarding alleged human rights violations that they have experienced. Based on the data of complaints received by Komnas HAM in the last five years, they received 7,188 files in 2016, 5,387 files in 2017, 6,098 files in 2018, and 5,314 files in 2019, (Komisi Nasional Hak Asasi Manusia, 2021), In 2020, there were 2,841 cases reported, and during the period from January to September 2021, there were 3,758 files, which were converted into 2,331 cases. The majority of complaints were related to alleged violations of the right to welfare, the right to justice, and the right to security. The most frequently reported parties were the Police, Corporations, and Local Governments. Based on this data, the classification of alleged human rights violations and the parties reported remained consistent with previous years, with violations of the right to welfare, the right to justice, and the right to security still dominating. Similarly,

the recurrence and typology of the reported parties, namely the Police, Corporations, and Local Governments, remained the same as in previous years.(Safitri, 2021)

The strategic issues that become Komnas HAM's priorities for 2020-2024 are of utmost concern and handled by Komnas HAM, including grave human rights violations, agrarian conflicts, violence by authorities and the community, freedom of speech and expression, violence and intolerance, and access to justice. Referring to the above complaint data in terms of the number of complaints, reported cases, reported parties, and Komnas HAM's priority programs for 2020-2024, it indicates the ongoing occurrence of numerous alleged human rights violations in society, and the high expectations of the public for Komnas HAM to address them. This poses a challenge for Komnas HAM with its available resources, authority, and limitations. (Rizkia, 2023)

The handling of severe human rights violations is a strategic and prioritized issue for Komnas HAM, which is a commitment that deserves appreciation and support from all parties. The enforcement of law concerning severe human rights violations has garnered attention from both national and international communities, raising questions about whether Indonesia has the willingness and capability to resolve various severe human rights violation cases that have been stagnating in the legal process.

Komnas HAM has completed investigations on 12 (twelve) severe human rights violation cases and is awaiting the follow-up by the Attorney General's Office, acting as the investigator and public prosecutor, in accordance with the provisions of the Human Rights Court Law. Since the enactment of the Human Rights Court Law, severe human rights violation cases that have been processed and adjudicated by the Human Rights Court, such as the cases of East Timor, Tanjung Priok, and Abepura, have resulted in all the defendants being acquitted by the Ad Hoc Human Rights Court. This casts a dark shadow on the enforcement of the law concerning severe human rights violations. Regardless of the judicial independence in deciding on cases, there is a need for a comprehensive evaluation concerning both the legal aspects and the political will of the Government and Law Enforcement Institutions in respecting, protecting, and fulfilling human rights. The fact of the defendants' acquittal by the Court highlights several issues that need to be addressed, particularly concerning the institutional aspects and authority of Komnas HAM.

## **1. Strengthening the Institutional Position of Komnas HAM**

Following the amendments to the 1945 Constitution, many new state auxiliary agencies were established in the Indonesian governance system. These independent state auxiliary agencies were established based on partial and incidental issues, as specific responses to prevailing problems. These agencies were formed under different legal bases, some being mentioned in the Constitution, others regulated by laws, and some even established through presidential decrees. This resulted in the effectiveness of these commissions within the governance structure, impacting their operations that may not align with the noble objectives of their establishment.(Pagano, 2002)

Komnas HAM holds significant importance as part of the advancement of human rights in Indonesia. Although its existence is not explicitly stated in the 1945 Constitution, Komnas HAM can be deemed to have constitutional importance similar to other institutions. (Jimly Asshiddiqie, 2010) The National Commission on Human Rights (Komnas HAM) was established based on Law No. 39 of 1999 concerning Human Rights, and in Article 1 number 7, Komnas



HAM is referred to as an independent institution at the level of other state institutions, tasked with conducting studies, research, and education.

The positioning of Komnas HAM as an "independent institution at the level of other state institutions" has led to varying interpretations. Whether Komnas HAM is considered a state institution or not remains unclear. This ambiguity in the institutional status of Komnas HAM within the governance system affects its rights and authorities in disputes before the Constitutional Court, where it may act as the petitioner in the constitutional review of laws. This includes individual, public/private legal entities, or state institutions. Additionally, it involves the legal standing in disputes concerning state institutions' authority before the Constitutional Court. In case number: 031/PUU-IV/2006, the Constitutional Court ruled that the Indonesian Broadcasting Commission did not have legal standing, and thus, the petition was deemed inadmissible (*niet ontvankelijk verklaard*). The basis for this decision was that the Constitutional Court deemed the Indonesian Broadcasting Commission to be a state institution established and granted authority by laws, not by the 1945 Constitution. (MAHADEWI, 2017)

The existence of Komnas HAM's institutional framework still has several weaknesses, affecting its effectiveness in carrying out its duties and functions. If the position of Komnas HAM is clarified as an independent state institution, regulated in the 1945 Constitution, it can pursue judicial reviews before the Constitutional Court or the Supreme Court to test regulations that may violate human rights or conflict with human rights protection. Therefore, institutional strengthening of Komnas HAM within Indonesia's governance system is needed. In essence, the legal construction that needs to be altered concerning Komnas HAM's institutional status lies within the amendment of the Indonesian Constitution, i.e., the 1945 Constitution.

## **2. Strengthening the Authority of Komnas HAM**

Apart from its institutional aspects, Komnas HAM also requires a reinforcement of its authority. The Law No. 39 of 1999 concerning Human Rights has mandated Komnas HAM to realize a conducive implementation of human rights, enhance protection, and advancement of human rights for all Indonesian citizens. It also has tasks and authority to function in research and study, education, monitoring, and mediation (the four main functions of Komnas HAM). The Law No. 26 of 2000 concerning Human Rights Courts grants Komnas HAM the authority to conduct investigations into allegations of severe human rights violations. Additionally, in the Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination (ERED), Komnas HAM plays a supervisory role. Supervision involves a series of actions carried out by Komnas HAM with the purpose of evaluating government policies, both at the central and regional levels, conducted periodically or incidentally, by means of monitoring, fact-finding, and assessment to identify the existence of racial and ethnic discrimination, followed by recommendations. The tasks and authorities of Komnas HAM, which are regulated in various laws without being consolidated in a specific law governing Komnas HAM, may lead to different interpretations and potential disputes over its authority. (Puspitasari, 2002)

The current authorities held by Komnas HAM need to be reevaluated to align with legal developments and to address issues or challenges faced so that

the envisioned purpose of establishing Komnas HAM can be realized. For example, the authority of Komnas HAM to request information/data/documents, conduct summonses, mediate, provide advice/opinions, and make recommendations—do these have legally binding or coercive force for implementation? Are there legal consequences if they are not complied with or implemented? Until now, it has been reliant on the political will and good faith of the government or relevant institutions or parties. As an investigator in cases of severe human rights violations, Komnas HAM's authority should be expanded not only as an investigator but also as an investigator and public prosecutor, similar to the authority of the Corruption Eradication Commission in corruption cases. Severe human rights violation cases constitute extraordinary crimes qualified as *delicta jure gentium* (crimes against the law of nations) and are violations of *jus cogens* (general principles in international law relating to morality). Therefore, extraordinary solutions and methods are needed to address the challenges in the legal process of enforcing severe human rights violation cases. (Romli Atmasasmitha, 2005)

#### **D. Conclusion**

Handling severe human rights violations remains a strategic and prioritized issue for the National Commission on Human Rights (Komnas HAM), deserving appreciation and support from all parties. However, the legal process of enforcing severe human rights violation cases in Indonesia still faces challenges and obstacles, raising questions about Indonesia's willingness and capability to resolve these cases. Komnas HAM has conducted investigations into 12 cases of severe human rights violations and is waiting for the Attorney General, as the investigator and public prosecutor, to follow up in accordance with the provisions of the Human Rights Court Law. Nevertheless, a dark record in the enforcement of the law against severe human rights violations emerges from several cases that were decided by the Ad Hoc Human Rights Courts, such as the Timor Timur case, Tanjung Priok case, and Abepura case, which resulted in the acquittal of the defendants in those cases.

A comprehensive evaluation is necessary for the enforcement of the law against severe human rights violations, both from legal aspects and the political will of the government and law enforcement agencies. The authority of Komnas HAM also needs to be reevaluated to address issues and challenges faced in upholding human rights protection. For example, the legal force of Komnas HAM's authority to request information/data/documents, conduct summonses, mediate, provide advice/opinions, and make recommendations needs to be considered to ensure compliance from relevant parties. Severe human rights violation cases constitute extraordinary crimes qualified as *delicta jure gentium*, demonstrating an exceptional level of criminality and a violation of general principles in international law concerning morality (*jus cogens*). Therefore, handling severe human rights violation cases requires extraordinary solutions and approaches to achieve justice and truth. In facing various obstacles and challenges, the role of Komnas HAM as an independent institution in protecting human rights in Indonesia remains crucial and needs to be strengthened. The active involvement and participation of the society are also essential in supporting human rights protection efforts to create a fair, democratic, and human rights-respecting society for every

individual. With commitment and collective efforts, it is hoped that human rights enforcement in Indonesia can improve and deliver justice for all.

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