

## HUMAN RIGHTS IN THE PERSPECTIVE OF CONSTITUTIONAL LAW: BETWEEN CONSTITUTIONAL SUPREMACY AND PUBLIC POLICY DISHARMONY

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**Abstract:** This study aims to analyze the constitutional status of human rights within the framework of Indonesian constitutional law and to examine the disharmony between constitutional supremacy and public policy-making practices. This research is based on the strengthening of human rights guarantees after the amendment of the 1945 Constitution of the Republic of Indonesia (1999–2002), which marked a paradigmatic shift from government supremacy to constitutional supremacy. This research uses normative juridical methods, utilizing legal, conceptual, and analytical approaches to constitutional provisions, legal doctrines, and constitutional court decisions. These findings suggest that, at a normative level, human rights have achieved an amplified position as a constitutional right that binds all branches of state power. However, in the realm of public policy implementation, tensions remain between administrative legality and constitutional legitimacy, especially in matters concerning development policies, freedom of expression, and public participation. The study concludes that effective protection of human rights depends on the integration of constitutional supremacy in its normative, institutional, and ethical dimensions, thus ensuring that the Constitution operates as an instrument of substantive justice in a democratic state of the rule of law.

**Keywords:** Human Rights; Constitutional Supremacy; Constitutional Law; Rule of Law; Public Policy.

### A. INTRODUCTION

Human rights are the moral and juridical foundation for the formation of the modern state.<sup>1</sup> In the paradigm of constitutionalism, the state is not solely formed to exercise power, but to guarantee and protect human dignity as the source of the highest legitimacy of power itself.<sup>2</sup> A state that fails to protect the basic rights of its citizens has essentially lost its existential

<sup>1</sup> Irwan Triadi. *Human Rights as the Principle of Jus Cogens: A Study of the Philosophy of Law*. Studia: Journal of Humanities and Education Studies, Vol. 1 No. 1, (2025), p. 210

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basis as a legitimate organization of power. Therefore, the discussion of human rights from the perspective of constitutional law is actually a discussion about the limits, direction, and legitimacy of state power.

In the context of the Indonesian state, the commitment to human rights was significantly strengthened through the amendment of the 1945 Constitution of the Republic of Indonesia in the 1999-2002 period. This constitutional amendment gave birth to Chapter XA on Human Rights (Articles 28A–28J), which for the first time provided for the guarantee of human rights systematically and comprehensively in the text of the constitution. This transformation marks a paradigm shift in constitutionality from *government supremacy to constitutional supremacy*,<sup>3</sup> while affirming Indonesia as a state of law that relies on respect for the basic rights of citizens.

Normatively, constitutional recognition reinforces the position of human rights as an integral part of the constitutional structure. The state is no longer seen as an entity that is above the citizen, but rather as an institution that is limited and directed by constitutional norms.<sup>4</sup> Within this framework, human rights have not only a moral and philosophical dimension, but also a juridical dimension that binds all branches of state power.<sup>5</sup> The existence of institutions such as the Constitutional Court which has the authority to test the law against the constitution further confirms that the protection of citizens' constitutional rights is at the core of the Indonesian constitutional law system.

However, this normative progress has not yet been fully proportional to the reality of praxis. In various development policies, especially those related to natural resource management and large-scale investment, there is often tension between the economic growth agenda and the protection of people's social rights.<sup>6</sup> A number of cases show that formally legal policies can ignore the right to a good environment, the right to participate, and the right to social welfare as guaranteed by the constitution. This phenomenon creates a paradox in the legal state: administrative legality is not always synonymous with substantive justice.

This condition shows that there is a gap between the ideals of the constitution and the implementation of public policies. Laws that are supposed to serve as instruments of limiting power and protecting human rights are often reduced to formal legitimacy for political and economic interests. In such a situation, a study that is not only normative-dogmatic, but also

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<sup>3</sup> Saiful Risky, Febriansyah Ramadhan, & Fitria Esfandiari. *Legalization of Executive Supremacy? Socio-Legal Studies on Ministerial Reform in Indonesia*. Udayana Journal of Master of Law, Vol. 14 No. 2, (2025), p. 330

<sup>4</sup> Jimly Asshiddiqie. *Constitution and Indonesian Constitutionalism*. Jakarta: Sinar Grafika, (2021), p. 47

<sup>5</sup> Mohammad Gunawan Sigit. *Reconstruction of the Pancasila Legal State in the Exercise of Power in Indonesia based on the 1945 Constitution*. Syntax Literacy: Indonesian Scientific Journal, Vol. 3 No. 2, (2018), p. 58

<sup>6</sup> Auzan Qasthary, Basri Effendi, & Aditya Rivaldi. *Integration of environmental rights in natural resource management policies*. Journal of Maritime Law Justice, Vol. 20 No. 2, (2025), p. 181

reflective and critical is needed to examine how human rights principles are integrated into Indonesia's legal system and constitutional practice.

Based on this background, this study is important to analyze the position of human rights in the perspective of Indonesian constitutional law, both from the philosophical, normative, and institutional dimensions, as well as to examine the challenges of its implementation in public policy. Thus, this research is expected to make a theoretical contribution to the development of the Indonesian constitutionalism discourse and to offer a critical reflection on the practice of administering power in a democratic and socially just legal state.

## **B. RESEARCH METHODS**

This research uses normative legal methods, focusing on the analysis of positive legal norms, legal principles, and legal doctrines related to human rights within the Indonesian constitutional legal system.<sup>7</sup> This method was chosen because the research aims to examine, conceptually and normatively, the relationship between constitutional supremacy and the implementation of public policies with implications for the protection of human rights.

In this framework, law is understood as a system of norms with a prescriptive dimension, so that the research not only describes the applicable provisions but also evaluates the consistency and harmonization between constitutional norms and state policy practices. The main focus of the research is directed at the position of human rights in the Indonesian constitution after the amendment of the 1945 Constitution of the Republic of Indonesia as well as on the constitutional mechanisms that function to limit state power.

## **C. DISCUSSION**

The thinking of human rights in constitutional law is essentially a reflection of the classic question: how to limit power so as not to oppress freedom, and how to guarantee freedom without undermining the rule of law.<sup>8</sup> From natural law thought to modern constitutionalism, human rights have always been positioned as a normative instrument to control the potential for excess power. In the context of the rule of law, constitutional supremacy serves as a bridge

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<sup>7</sup> Agus Suntoro. *The application of human rights principles and norms in the Law on the Eradication of Terrorism Crimes*. Journal of the State of Law: Building Law for Justice and Welfare, Vol. 11 No. 1, (2020), p. 67

<sup>8</sup> Iskandar, Tetty Liyawanti, Sanusi, & Moh. Sigit Gunawan. *The Effectiveness of Women's Reproductive Rights Protection from the Perspective of Health Law and Substantive Justice: A Juridical Analysis of Regional Policy Implementation in Cirebon Regency*. Veredas do Direito, Vol. 23 No.2, (2026), p. 2

between moral ideals and political reality, ensuring that power does not stand on the law, but is subject to it.<sup>9</sup>

Theoretically, the conception of human rights develops through three main currents of thought that complement and correct each other:

**Table 1. Three Schools of Thought in the Causality of Reflection on Constitutional Law**

Nope.	School of Thought	Key points	Implications in Constitutional Law
1.	Natural Laws	The right to be attached from birth, to precede the nation	The Constitution only recognizes and guarantees the right to
2.	Legal Positivism	Rights apply if institutionalized in law	The protection of human rights requires written norms
3.	Critical Approach	Law is not neutral, influenced by power	The implementation of human rights must be structurally monitored

In the natural law tradition, John Locke asserted that humans had the right to life, liberty, and property before the state came into existence.<sup>10</sup> The state is not here to create these rights, but to protect them. This perspective treats human rights as pre-legal rights, rights that are morally superior to positive law. This conception influenced the birth of modern constitutional documents that placed rights as the limits of power.

On the contrary, legal positivism holds that a right acquires binding force only after it is institutionalized in written norms.<sup>11</sup> Without constitutionalization, rights are just moral claims. This is where the codification of human rights in the national legal system becomes important. Legal certainty is a prerequisite for the enforcement of rights through judicial mechanisms. The critical approach reminds us that the law is never free of political and economic interests. In public policy practice, human rights norms are often related to the agenda of development, investment, and political stability. Therefore, the supremacy of the Constitution must be read substantively, not just procedurally.

This transformation is clearly seen in the amendment of the 1945 Constitution of the Republic of Indonesia. The inclusion of Chapter XA (Articles 28A–28J) marked a shift from *governmental supremacy* to *constitutional supremacy*. For the first time, civil, political,

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<sup>9</sup> Muhammad Fikri Alwan. *Constitutional Law Enforcement in Maintaining Constitutional Stability in Indonesia: Between Ideality and Reality*. Multilingual Journal, Vol. 5 No. 1, (2025), p. 378

<sup>10</sup> Rafi Caesario Rumanda, Hanifa Mutiarani Iskandar, Divia Zunfriska Irawan, & Mohammad Alvi Pratama. *John Locke's Thoughts on the Rights of Nature and Society*. Nusantara: Journal of Education, Arts, Science, and Social Humanities, Vol. 3 No. 1, (2025), p. 3

<sup>11</sup> Congratulations to Ferovina Wuntu & Geby Febiolandia. *The Relationship of Legal Philosophy with Human Rights*. Journal of Interdisciplinary Legal Perspectives, Vol. 2 No. 1, (2025), p. 3

economic, social, and cultural rights were systematically regulated in the constitution. These changes can be mapped as follows:

**Table 2. Comparison of Pre- and Post-Amendment Governance Paradigms of the 1945 Constitution of the Republic of Indonesia**

Nope.	Aspects	Pre-Amendment	Post-Amendment	Constitutional Implications
1	Human Rights Position	Citizens' rights are limited, diffuse, and implicit	Human rights are explicitly regulated in Chapter XA (Articles 28A–28J)	Strengthening of normative guarantees and broadening the spectrum of protection
2	Power Orientation	The state as a center of legitimacy and source of rights	The Constitution as a source of legitimacy and a limit to power	Shift from <i>state-centered</i> to <i>constitution-centered</i>
3	Power Structure	Executive dominance; MPR as the highest institution	A more decisive separation of powers; Checks and Balances	More balanced distribution of power
4	Constitutional Control	No <i>judicial constitutional review</i>	<i>Review</i> by the Constitutional Court	Legislative testing of the constitution
5	Public Participation	Limited and elitist	Expanded through the principles of constitutional democracy	More open and accountable legislation
6	Principles of the State of Law	<i>Legal rule</i> (formal legality)	<i>Constitutional supremacy</i> and human rights	Emphasis on substantive justice
7	MPR Position	The highest institution of the country	State equivalent institutions	No institutional supremacy

The supremacy of the constitution is then strengthened through *judicial review* by the Constitutional Court. The Court not only examines the formal legality, but also assesses the suitability of the substance of the law to its constitutional value. In Decision No. 35/PUU-X/2012 on customary forests, the Court emphasized that state control over natural resources is not absolute ownership, but a mandate for the prosperity of the people. This ruling reflects the substantive supremacy of the Constitution.

However, constitutional supremacy does not automatically remove disharmony in public policy. In practice, a number of development policies show the tension between constitutional norms and administrative implementation, in examples such as the following:

**Table 3. Analytical Norms, Practices, and Concrete Case Examples**

No	Constitutional Norms	Policy Practice	Example Case (Year)	Potential Violations
1.	Right to the environment (Article 28H paragraph 1)	Mining permits and exploitation of natural resources	gold mining conflict in Tumpang Pitu, Banyuwangi (2015–2018); Flooding due to coal mines in South Kalimantan (2021)	Ecological damage, loss of living space, and agrarian conflicts
2.	Freedom of expression (Article 28E paragraph 3)	Criminalization of digital expression through the ITE Law	the case of Baiq Nuril (2018); Jerinx SID (2020)	Disproportionate expression restrictions and indicator standards against the use of multi-interpreted and overly broad delicts
3.	Public participation in the formation of laws (Principles of constitutional democracy)	Legislation lacks public consultation	Ratification of the Job Creation Law (2020)	Deficit of legitimacy and procedural unconstitutionality

These cases show that administrative legality is not always synonymous with constitutional legitimacy. This is where the principle of proportionality comes in: any restriction of rights must have a clear legal basis, a legitimate purpose, and a balance between means and ends. Within the framework of Indonesian constitutional law, the protection of human rights rests on several main principles:<sup>12</sup>

1. Universality Principles

The principle of universality affirms that human rights are inherent in every human being from birth, regardless of nationality, social status, religion, gender, or other background. Rights are not given by the state, but are recognized by the state.

2. Principle of Non-Discrimination

<sup>12</sup> Andinia Noffa Safitria, Zahrotul Afifah, Dwi Mei Nandani, Wikha Rahmaleni, Ananda Thalia Wahyu Salsabilla, & Kuswan Hadji. *Constitutional Implementation of Human Rights Protection in the Perspective of Constitutional Law*. Aladalah: Journal of Politics, Social, Law, and Humanities, Vol. 2 No. 3, (2024), p. 239

The principle of non-discrimination is a direct derivative of universality. If rights are inherent in every human being, then every human being must be treated equally before the law. The Indonesian Constitution affirms that everyone has the right to fair legal recognition, guarantee, protection, and certainty. This equality is not only formal, but also substantive.

### 3. Principles of social justice

Social justice is a distinctive feature of the Indonesian constitution that distinguishes it from pure classical liberalism. This principle not only demands individual freedom, but also emphasizes the responsibility of the state to protect structurally weak groups. The principle of social justice demands a more active approach from the state. The state is not neutral enough; He must take affirmative steps to reduce inequality.

### 4. Principles of proportionality

There are no absolute rights in the modern constitutional system (except certain rights such as the right not to be tortured). Therefore, the limitation of rights is possible, but it must meet the principle of proportionality. Without proportionality, the restriction of rights easily turns into the legitimacy of silencing. In a democratic rule of law, restrictions must be rational, measurable, and judicially testable.

### 5. Principle of constitutional supremacy

The supremacy of the constitution is a principle that ensures that the entire legal system is subject to the basic norms of the state. In the theory of the hierarchy of norms, the constitution occupies the highest position. Without constitutional supremacy, human rights are vulnerable to political change. With the supremacy of the constitution, the right to obtain stability and long-term protection.

These principles do not stand alone, but form an ethical unity in the constitutional system. Rights and obligations are positioned in a balanced manner as affirmed in Article 28J of the 1945 Constitution. Indonesia's human rights paradigm is not purely liberal-individualistic, but is rooted in the value of Pancasila which emphasizes social justice.

However, the biggest challenge lies in the gap between norms and implementation. Many policies are textually legitimate, but substantively erode people's social rights. This shows that the main problem is no longer the emptiness of norms, but the consistency of enforcement. Therefore, the supremacy of the constitution must be interpreted in three layers:

#### 1. Normative Supremacy

It is the main foundation of the constitutional law state, namely, the principle that the constitution occupies the highest position in the hierarchy of laws and regulations. In this framework, all legal products, both laws, government regulations, and administrative

policies, must be subject to and in harmony with constitutional norms. Normative supremacy concerns not only the formal aspects of the legal hierarchy, but also reflects a commitment that the basic values contained in the constitution, including human rights, become the main parameters in the formation and implementation of public policies.

## 2. Institutions of Supremacy

Judicial independence is an absolute requirement for institutional supremacy. Without freedom from political intervention, the judiciary cannot carry out its supervisory functions objectively. An independent judiciary guarantees that every citizen has access to constitutional justice, especially when their rights are violated by state policies. Thus, institutional supremacy is a concrete manifestation of the principle of checks and balances in a constitutional democratic country.

## 3. Ethical Supremacy

Above normative and institutional supremacy, there is a deeper dimension, namely ethical supremacy. Ethical supremacy refers to the internalization of constitutional values in the moral consciousness of state administrators. The Constitution is not only obeyed because of legal obligations, but is carried out as a moral commitment to justice, human dignity, and common welfare. Ethical supremacy requires what is often referred to as *constitutional morality*, namely the willingness of political actors and public officials to act in accordance with the spirit of the constitution, even when there are no immediate legal sanctions. Constitutional morality prevents the practice of legal manipulation, abuse of normative loopholes, or the use of authority formally legitimate but substantively detrimental to the rights of citizens

Without a third layer, the supremacy of the constitution risks becoming a mere formal symbol. The Constitution can be cited in discourse, but ignored in policy. In the end, human rights from the perspective of Indonesian constitutional law are an ongoing dialectical process. The supremacy of the Constitution must function as a normative compass that directs public policy to favor human dignity. When norms and policies are in harmony, the state of law moves towards substantive justice. But when disharmony is allowed, the constitution loses its transformational power.

Thus, the meeting between constitutional supremacy and public policy becomes a test room for the quality of Indonesia's constitutional democracy. That is where human rights find their true meaning not only as a constitutional text, but as the soul in the administration of state power.

## **D. CONCLUSION**

Human rights in the perspective of Indonesian constitutional law occupy a fundamental position as the limit as well as the legitimacy of state power. The amendment to the 1945 Constitution of the Republic of Indonesia has affirmed the paradigm shift from the supremacy of power to the supremacy of the constitution, by including explicit and comprehensive guarantees of human rights in the constitutional structure. This transformation confirms that the constitution is no longer merely a document for the organization of state institutions, but a basic norm that places human dignity as the center of the orientation of power. Thus, human rights gain a position as a constitutional right that binds all branches of power and becomes the main parameter in the formation and testing of public policies.

However, this study shows that there is a tension between the normative ideals of the constitution and the reality of policy implementation. Various policy practices in the field of natural resource management, restrictions on freedom of expression, and legislative processes with minimal public participation show that administrative legality is not always synonymous with constitutional legitimacy. This is where the relevance of constitutional supremacy is tested concretely. The role of the Constitutional Court through the *judicial review mechanism* is an important instrument in maintaining consistency between norms and practices, but its effectiveness still depends on institutional independence, integrity of law enforcement, and political compliance with constitutional decisions.

Ultimately, constitutional supremacy must be understood integrally in three dimensions: normative, institutional, and ethical. Normative supremacy ensures a legal hierarchy that places the constitution as the highest reference; institutional supremacy ensures the existence of an independent corrective mechanism; and ethical supremacy demands the internalization of constitutional values in the practice of power. Without an ethical dimension, the constitution risks becoming a formal symbol without transformational power. Therefore, the quality of Indonesia's constitutional democracy is determined by the extent to which human rights are truly used as a compass in the administration of the state, so that the supremacy of the constitution does not stop as a text, but lives as a soul in the practice of social justice.

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