

Analysis of Article 28I Paragraph (4) of the 1945 Constitution on the Protection of Minority Rights and the Principle of Non-Discrimination in the Indonesian Legal System

Yana Priyana¹, Sopian²

¹Eastasouth Institute

²Universitas Islam Batang Hari

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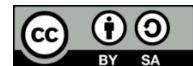
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ABSTRACT

This paper examines Article 28I Paragraph (4) of the 1945 Constitution of the Republic of Indonesia from a normative juridical perspective, focusing on its role in protecting minority rights and upholding the principle of non-discrimination. As a constitutional provision, Article 28I (4) mandates the state—particularly the government—to ensure the protection, promotion, enforcement, and fulfillment of human rights. The study analyzes how this mandate is reflected in national laws, judicial decisions, and administrative practices, while also assessing Indonesia's compliance with international human rights obligations. The findings reveal that despite strong constitutional commitments, the implementation remains inconsistent due to inadequate enforcement, the absence of a comprehensive anti-discrimination law, and the persistence of discriminatory local regulations. The study recommends legal harmonization, institutional strengthening, and the enactment of specific anti-discrimination legislation to ensure equal rights for all citizens, especially minorities. This research contributes to the development of a more inclusive and just legal framework in Indonesia.

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Corresponding Author:

Name: Yana Priyana

Institution: Eastasouth Institute

e-mail: mrpyana@gmail.com

1. INTRODUCTION

The protection of minority rights and the principle of non-discrimination are fundamental elements in the development of a democratic and just legal system. In Indonesia, a country known for its rich diversity in ethnicity, religion, culture, and language, the recognition and protection of minority groups is not merely a moral imperative but a constitutional mandate. Article 28I Paragraph (4) of the 1945 Constitution (UUD 1945) explicitly states that

the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially towards vulnerable and marginalized groups. This provision underscores the state's duty to safeguard the rights of minorities and ensure equal treatment for all citizens regardless of background. Despite these legal frameworks, challenges persist in the practical implementation of these rights, particularly for ethnic, religious, and indigenous minorities. Indonesia's legal framework

includes several laws aimed at protecting minority rights, such as Law No. 40 of 2008 and Law No. 39 of 1999, which address discrimination based on race and ethnicity [1], and the state also recognizes and respects indigenous peoples' rights as outlined in the Constitution [2]. However, cases like the Cikeusik tragedy, highlight the gap between legal protections and enforcement [3]. Political pressures and agendas have also led to discriminatory policies that contradict constitutional guarantees of religious freedom [3], while the lack of socialization and awareness of existing regulations contributes to ongoing discrimination, particularly against racial and ethnic minorities [1]. Thus, although Indonesia possesses a robust legal framework for minority rights, systemic and socio-political challenges continue to undermine their full realization.

Despite the constitutional guarantee enshrined in Article 28I Paragraph (4) of the 1945 Constitution, the reality of minority protection in Indonesia remains complex and fraught with challenges. Discrimination based on religion, ethnicity, belief, and social status continues to occur, revealing a persistent gap between constitutional ideals and their realization in legal or institutional practices. Discriminatory local regulations, social exclusion, and the absence of adequate legal remedies underscore systemic obstacles to implementing the principle of equality before the law. These shortcomings call into question the effectiveness of Article 28I Paragraph (4) as a robust legal foundation for protecting minority rights and eliminating discrimination. Discrimination persists in various sectors, including education, where international students report experiencing prejudice with limited institutional response [4]. Although Indonesia's legal frameworks appear comprehensive, they frequently fall short in implementation due to poor socialization and enforcement, contributing to continued racial and ethnic discrimination [1]. Religious minorities face additional hurdles, as the state's preferential treatment of six

recognized religions marginalizes other belief systems, which suffer from inconsistent legal recognition and protection [5]. Social and institutional barriers further compound these issues, with religious intolerance and bigotry fueling social and political conflict, thereby undermining democratic values and individual freedoms [6]. The government's responses, while present, often lack effectiveness, necessitating stronger law enforcement and enhanced community engagement to combat discrimination and foster inclusion [7].

This paper employs a normative juridical analysis to examine the legal implications and enforceability of Article 28I Paragraph (4) within the broader framework of the Indonesian legal system, focusing on how this constitutional provision has been interpreted, applied, and supported by statutory laws and judicial decisions. It also evaluates the extent to which national laws and policies align with international human rights standards ratified by Indonesia, such as the International Covenant on Civil and Political Rights (ICCPR). The primary objective of this study is to identify the strengths and weaknesses of the existing legal framework concerning minority rights and to offer recommendations for strengthening legal protection through legislative and institutional reforms. By doing so, this research seeks to support the development of a more inclusive and equitable legal system in Indonesia, one in which the rights of all individuals—particularly those in minority or vulnerable groups—are fully recognized, protected, and upheld.

2. LITERATURE REVIEW

2.1 *Concept of Minority Rights*

Minority rights are a vital part of international human rights law, aiming to protect individuals and groups who differ from the majority in ethnicity, religion, language, or culture. These rights are based on the principle of substantive equality, recognizing the specific vulnerabilities of minority communities. In Indonesia, their

protection is not only a constitutional mandate but also an international obligation following the ratification of the International Covenant on Civil and Political Rights (ICCPR) in 2005. Article 27 of the ICCPR safeguards the rights of ethnic, religious, and linguistic minorities, promoting cultural diversity and social harmony. Although minority rights were first acknowledged after World War I through the League of Nations, a more effective framework emerged post-World War II [8]. The ICCPR, particularly Article 27, plays a key role in affirming the rights of minorities to preserve their identity [9]. However, defining “minorities” remains complex and poses implementation challenges in national laws [10], while the structure of international law may not always align with minority needs, requiring distributive justice approaches (Macklem, 2008). Indonesia’s ratification of the ICCPR reflects its commitment to harmonizing national law with global human rights standards [9], making it essential that the country’s legal system balances constitutional provisions with international obligations to ensure full protection of minority rights [11].

2.2 Principle of Non-Discrimination

The principle of non-discrimination is a cornerstone of human rights law, guaranteeing equal treatment and protection from unfair practices based on identity or status. In Indonesia, this principle is enshrined in the 1945 Constitution and further reflected in national legislation such as Law No. 40 of 2008 and Law No. 39 of 1999, demonstrating the country’s commitment to upholding non-discrimination principles in line with international human rights norms [1]. These international norms have significantly influenced Indonesia’s legal framework by aligning it with global standards to combat discrimination and promote equality [12]. However, despite this legal alignment, practical implementation remains limited due to cultural barriers, lack of public awareness, and weak institutional capacity [12]. Regional disparities and administrative weaknesses further hinder enforcement, resulting in persistent

discrimination against minority groups [1], [12]. While the Indonesian government has taken steps to protect minority rights, including legal reforms, non-legal preventive measures are also needed to address systemic issues effectively [1]. Enhancing institutional strength, improving public understanding, and addressing cultural resistance are essential to fully realizing the role of international human rights norms in advancing non-discrimination in Indonesia [12].

2.3 Article 28I Paragraph (4) of the 1945 Constitution

Article 28I Paragraph (4) of the 1945 Constitution of Indonesia establishes the state’s responsibility, particularly the executive branch, in safeguarding human rights, including the rights of minority groups. This provision represents a progressive development in constitutional law, underscoring the state’s positive obligations not only to refrain from violating human rights but also to actively promote and fulfill them [13], [14]. The 1945 Constitution, especially after the amendments from 1999 to 2002, has served as a foundational legal framework for the protection of civil, political, economic, social, and cultural rights in Indonesia [15]. Despite these advancements, the absence of detailed implementing laws and clear legal standards often leads to weak enforcement, creating a significant gap between legal norms and practical realities [15]. The concept of positive obligations, widely recognized in international human rights law, demands that states take active measures to ensure the realization of human rights, as derived from treaties and judicial interpretations [14]. In this context, effective protection of human rights requires a delicate balance between state authority and individual freedoms, which must be operationalized through concrete government actions and legal mechanisms [16]. The role of state institutions such as the Constitutional Court and Komnas HAM remains critical in ensuring that constitutional commitments translate into real and enforceable protections for all citizens,

particularly those in vulnerable or marginalized positions [15].

3. METHODS

The type of research used in this study is doctrinal legal research, which entails a systematic exposition of legal rules within a specific category, an analysis of the interrelationships among those rules, and an explanation of areas where inconsistencies or ambiguities exist. This method is applied to interpret constitutional provisions, statutory regulations, and judicial decisions related to minority rights and the principle of non-discrimination in Indonesia. The research adopts three key approaches: the statutory approach, which examines legal instruments such as Article 28I Paragraph (4) of the 1945 Constitution, Law No. 39 of 1999 on Human Rights, and Law No. 12 of 2005 on the Ratification of the ICCPR; the conceptual approach, which explores foundational legal ideas such as minority rights, equality before the law, and the state's duties in human rights protection as developed by scholars and international doctrines; and the comparative approach, which analyzes how other democratic countries implement constitutional protections for minorities and compares Indonesia's legal system with global human rights standards.

The legal materials used in this research are classified into three categories. Primary legal materials include the 1945 Constitution of the Republic of Indonesia (especially Article 28I), relevant national laws such as Law No. 39 of 1999, international human rights instruments like the ICCPR and the Universal Declaration of Human Rights, and decisions of the Constitutional Court concerning minority rights and non-discrimination. Secondary legal materials consist of scholarly books, journal articles, expert commentaries, and institutional reports from entities such as Komnas HAM, NGOs, and academic researchers that provide insight into the interpretation and application of legal norms. Tertiary legal materials encompass legal dictionaries, encyclopedias,

and indexes that support the definition and conceptual understanding of key legal terms. The data analysis is conducted using qualitative normative methods, which interpret legal texts based on applicable legal doctrines and principles. This process includes identifying relevant legal norms, interpreting Article 28I Paragraph (4) through grammatical, systematic, teleological, and comparative techniques, evaluating the conformity of Indonesian laws with constitutional and international standards, and assessing existing legal and institutional gaps in the protection of minority rights.

4. RESULTS AND DISCUSSION

4.1 Constitutional Mandate for Human Rights Protection

Article 28I Paragraph (4) of the 1945 Constitution states:

"Perlindungan, pemajuan, penegakan, dan pemenuhan hak asasi manusia adalah tanggung jawab negara, terutama pemerintah."

This clause establishes the positive obligation of the state to actively protect and fulfill human rights, especially for marginalized or vulnerable groups, including minorities. The inclusion of this provision in the post-amendment Constitution reflects Indonesia's commitment to universal human rights principles. It moves beyond a passive guarantee of rights and imposes an affirmative duty on government institutions to ensure that every citizen, regardless of background, is treated equally under the law.

However, while the Constitution provides a broad foundation for rights protection, its practical implications depend on the existence of coherent implementing laws and consistent jurisprudence.

4.2 Legal Frameworks and Supporting Legislation

Several national laws in Indonesia reinforce the principle of non-discrimination and minority protection. Among them, Law No. 39 of 1999 on Human Rights guarantees equality before the law and prohibits discrimination under Articles 3 and 4. Law

No. 12 of 2005, which ratifies the International Covenant on Civil and Political Rights (ICCPR), obligates the state to uphold the rights of ethnic, religious, and linguistic minorities. Furthermore, Law No. 26 of 2000 on Human Rights Courts provides a mechanism to address gross human rights violations, including those stemming from systematic discrimination. Despite these legal foundations, the absence of a comprehensive Anti-Discrimination Law significantly hampers the effective enforcement of minority protections. Decentralization in Indonesia has also enabled the enactment of discriminatory local regulations (Peraturan Daerah), which often conflict with national legislation and constitutional guarantees [1], [17].

Although existing laws—such as Law No. 39 of 1999 and Law No. 12 of 2005—are aligned with international human rights standards like the ICCPR, their implementation remains weak, mainly due to insufficient socialization and lack of effective enforcement mechanisms [1]. The issuance of local regulations under decentralized governance structures further complicates the protection of minority rights, especially when such regulations contradict national norms. A prominent case of this issue is the systemic discrimination faced by ethnic Papuans, who experience exclusion in economic, political, and educational spheres [17], [18]. The lack of professionalism and accountability among law enforcement officers has also contributed to the ineffective application of anti-discrimination laws, allowing new forms of marginalization to emerge [18]. Therefore, there is a pressing need for the enactment of a comprehensive Anti-Discrimination Law that aligns with international standards and addresses structural and institutional challenges in protecting minority rights [19], [20].

4.3 Institutional and Judicial Enforcement Gaps

While institutions such as Komnas HAM (National Human Rights Commission) and the Ombudsman have made efforts to address human rights violations, their

recommendations often lack legal binding force, limiting their practical impact on policy and law enforcement [21]. Judicial decisions concerning minority rights also exhibit inconsistency—some rulings reinforce protections, while others are vague or dismissive [22]. For example, the Constitutional Court has, in certain cases, upheld the rights of religious minorities such as the Ahmadiyah communities; however, enforcement at the local level remains weak due to resistance from local authorities and inadequate police protection [22]. This reveals a significant gap between constitutional guarantees and administrative practices. Furthermore, minority groups such as indigenous communities (masyarakat adat), religious sects, and ethnic minorities continue to face legal uncertainty in areas such as land rights, religious freedom, and recognition of cultural identity, largely due to the absence of precise legal definitions for terms like “minority” or “vulnerable group” in Indonesian law [23].

Institutional limitations also hinder effective human rights enforcement. Komnas HAM and the Ombudsman, while instrumental in investigating rights violations, are restricted by their inability to enforce decisions, reducing their influence on systemic change. At the same time, the judiciary lacks consistency in ruling on cases involving minority protections, which undermines legal certainty for affected groups [22]. The absence of coherent legal standards and the discrepancies between national laws and constitutional mandates particularly affect stateless persons and other vulnerable populations (Muhammad, 2024). In addition to legal and institutional barriers, socio-political challenges further complicate the situation. Instability, negative public attitudes, and unprofessional conduct among law enforcement personnel present significant obstacles to the realization of minority rights [24]. Institutional weaknesses within key human rights agencies aggravate these issues, emphasizing the urgent need for legal reform, stronger enforcement mechanisms, and greater political

commitment to upholding minority protections [24].

4.4 Compatibility with International Human Rights Standards

Indonesia is a signatory to several key international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights. Article 27 of the ICCPR guarantees the rights of minorities to enjoy their culture, practice their religion, and use their language. However, Indonesia has yet to fully harmonize its domestic legal framework with these international standards. For instance, customary laws (*hukum adat*) are at times used to exclude minority groups from local governance processes, thereby limiting their participation and access to cultural rights as outlined in international law [25]. Moreover, Indonesian legal politics have historically facilitated the use of state regulations to manage religious and cultural life, often to the detriment of minority communities [25]. Similarly, blasphemy laws, particularly Article 156a of the Indonesian Penal Code, have drawn criticism for disproportionately targeting religious minorities and curbing freedom of expression [26]. These laws have been enforced in ways that promote discrimination and persecution, undermining the principle of equal treatment before the law [26].

These contradictions highlight the gap between Indonesia's international human rights commitments and its domestic legal practices. Despite constitutional provisions aimed at preventing discrimination, such as those enshrined in Article 28I of the 1945 Constitution, the practical implementation of these guarantees remains inadequate. There is a pressing need for more effective socialization and enforcement of existing regulations to address racial and ethnic discrimination [1]. Furthermore, various national and international actors have urged the Indonesian government to review and revise laws and policies that conflict with international human rights standards, especially those that enable intolerance and

marginalization of minority groups. This includes taking firm action against radical organizations that propagate hatred and discrimination [27]. As such, genuine legal harmonization requires not only policy reform but also a shift in enforcement practices and political will to uphold minority protections.

4.5 Recommendations for Legal Reform

The findings suggest several key recommendations to strengthen the implementation of Article 28I Paragraph (4) of the 1945 Constitution. First, Indonesia should enact a comprehensive Anti-Discrimination Law that includes clear legal definitions, robust protection mechanisms, and enforceable sanctions against discriminatory and hate-based actions. Second, local regulations must be harmonized with national laws and constitutional principles through judicial review and active oversight by the Ministry of Home Affairs. Third, the mandate of Komnas HAM should be reinforced by granting its recommendations binding authority or by establishing an independent human rights tribunal. Fourth, public education and awareness campaigns on minority rights and the principle of equality are essential to foster societal support for legal reforms. Lastly, to ensure consistency with international human rights commitments, national legislation should be periodically reviewed and aligned with international covenants such as the ICCPR.

5. CONCLUSION

Article 28I Paragraph (4) of the 1945 Constitution affirms the state's responsibility to protect, promote, enforce, and fulfill human rights, with a particular focus on the rights of vulnerable and minority groups. Normatively, this provision establishes a clear and progressive legal mandate for the Indonesian legal system to uphold principles of equality and non-discrimination. However, in practice, its implementation faces significant obstacles. These include the absence of specific implementing legislation, the persistence of discriminatory local

regulations, weak institutional enforcement mechanisms, and limited access to justice for minority communities. Despite constitutional commitments, the gap between legal ideals and on-the-ground realities remains wide, undermining the effectiveness of protections intended by the Constitution.

The study finds that although Indonesia has ratified key international human rights instruments, such as the ICCPR, their principles have not been fully integrated into the domestic legal framework. This disconnect highlights the urgent need for legislative reform, particularly the enactment of a comprehensive anti-discrimination law. Additionally, institutions like Komnas HAM

must be strengthened, both in terms of authority and resources, to ensure accountability and enforce compliance across all levels of government. To build a truly inclusive and equitable legal system, Indonesia must align its national laws with both constitutional mandates and international standards, reinforce the capacity of legal institutions, and cultivate a broad-based culture of human rights awareness. Only through sustained and systemic reform can the normative aspirations of Article 28I Paragraph (4) be translated into meaningful protections for all citizens, regardless of their background or identity.

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