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The State and Prospect of Legislation Number 39 Year 1999 of Indonesia

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Abstract: As national politics continues to have influence on human rights both in practice and theory globally, Indonesia also finds itself in a conundrum of human rights challenges. Like other legal entities that have ratified international instruments that deal with human rights, Indonesia has ratified, acceded to and domesticated relevant human rights instruments. At national level, Indonesia also has Legislation Number 39 of Year 1999 (hereinafter referred to as Law No. 39 of 1999) which deals with human rights. This research examines the failure or inability of this law to control the political elites over the years. It examines the influence of the Indonesian society on this legislation. Its *ius constitutum* is analyzed and thereafter, points out the *ius constituendum* as a prospect for a progressive society. In this research, a normative research method is used through analysis of authentic secondary data. This, therefore, reaches a finding that Indonesia's international human rights diplomacy should be strengthened at the level of Ministry of Foreign Affairs with technical support from the Ministry of Law and Human Rights. Going forward, strong advocacy policy on human rights across all the regions in Indonesia also needs to be in place by the government.

Keywords: Discrimination, Human Rights, Political Elite, Social Change.



1. Introduction

Globally, one of the most topical issues in governance system and running the affairs of states after the Cold War centres on human rights. Whether it is respect, protection, fulfilment and promotion of human rights, or its abuse, the relevance of laws and other legal instruments determines a lot in this. Internationally recognized human rights instruments including, inter alia, the 1948 Universal Declaration of Human Rights, International Covenant on Civil and Political Rights of 1966, International Covenant on Economic, Social, and Cultural Rights of 1966, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of Discrimination Against Women of 1979 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 are very efficient in ensuring good governance, social cohesion and integration among society. These instruments are supported at continental or regional levels by the African Charter on Human and Peoples' Rights of 1981 (the Banjul Charter) in terms of dealing with African human rights issues, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 as regards Europe, and the American Convention on Human Rights of 1969 as a human rights instrument that deals with human rights challenges in the American continents. Asia has not formed a regional human right instrument that can be accepted by all the states. Therefore, this lack of consensus creates difficulties whenever governments want to deal with human rights violations that are made by individual states [1]. Due to this, individual states in Asia ratified various international conventions on human rights to deal with their individual national issues.

On national politics and legal framework, Indonesia established Law No. 39 of 1999 concerning Human Rights. This research seeks to analyze this legislation as *ius constitutum* or an existing legislation. It is also determined to explain the reason society is changing and the nexus between the influence from elite groups or pluralist groups and the present status of the law. It further analyzes the prospect of this legislation as *ius constituendum*. The legal basis, theories and literatures are used to support the analysis of this paper thereby reaching a conclusion. Law No. 39 of 1999 about Human Rights is a product of human rights law reform that occurred in Indonesia. While this law has led to significant improvements in the area of establishing a legal foundation for the future protection of human rights, the implementation of the law still lacks practicality [2]. Since abuse and protection of human rights are global issues, Indonesia is not an exception to countries whose human rights activities are being given much attention. The recent annual human rights reports about the country also require analysis in order to assess the weakness and the strength of this law. In attempting to deal with the issues pertaining to this law, I make a reflection on Indonesian Human Rights report from 2017 to 2021 to help in analyzing this law.

The 2017 Human Rights Report records different kinds of violations of human rights in the country. The conditions of the prison and detention centres were recorded to be bad. The 2018 Human Rights Report records arbitrary deprivation of life and other unlawful or politically motivated killings by the government or its agents. Occasional violence continues to have negative impacts on Papua and West Papua, with clashes involving state agents on the people of these regions. The 2019 Human Rights Report is a replica of the previous two reports in terms of the violations that were committed and similar trends continue with the 2020 and 2021 Human Rights Reports.

The current happenings and developments in the Indonesian society puts Law No. 39 of 1999 into a legitimate and timely question in terms of its effectiveness in protecting the rights of the people. Efforts to uphold human rights violations in Indonesia have failed. Questions arise as to what caused the failure and what solutions should be taken to overcome it. Factors causing failure of human rights reconciliation include weak content of legislation, problems with political power and institutional relationships, lack of synergies, especially between the National Human Rights Commission and the Attorney General, and weak political will of the government [3]. Failure to resolve human rights violations in Indonesia is the reason for the need for human rights protection mechanism. This analysis is based on the fact that Article 28 of the Constitution of Indonesia 1945 upholds the protection of human right values. Indonesia has also signed and ratified key human rights instruments. The state's recognition of Universal Declaration of Human Rights also forms the legal basis of this research.

Indonesia is a country of laws that recognizes the fundamental human rights in international law and even ratified some international instruments that are germane to human right protection and promotion as well. Considering national politics as instrumental in national development, Indonesia enacted legislation as *ius constitutum* to protect the human rights of the people. The legal problem this

research focuses on is the practical ineffectiveness of Law No. 39 of 1999 concerning Human Rights. This legislation fails in several ways to protect the values and dignity of human rights of Indonesians. The values of the people as articulated in the preamble of this legislation and relevant articles in this legislation are being subjected to violations by the political class in their quest for power. So why is this law incapable of delivering effectively after more than two decades of its promulgation?

2. Literature Review

According to Irene Hadiprayitno, one of the most important developments in human rights promotion in Indonesia is the establishment of the national human rights law [4]. Inaya Rakhmani and Panji Anugrah Permana posits that the strengthening of human rights institutions in Indonesia should be pursued through institutional integration. The human rights institutions in the country should be integrated and function as a whole, as it happens to other international human rights institutions. Such a measure would enable the protection and enforcement of human rights in Indonesia to become more independent and effective [5]. Indonesia's commitment to human rights protection is derived from the five pillars of Pancasila. Fidelity to promote and protect human rights are premised on recognizing existing issues of the state. The integral components of human issues are of economic, social and cultural rights joint with civil and political rights, and one cannot be violated without to certain extent affecting the other. This is valid irrespective of whether it occurs during implementation or any other stage of ensuring their effectiveness. This, therefore, requires a balanced approach toward their realization, and it commensurate with human nature as an individual and a social being. For freedom and responsibility to gain traction in a society, there ought to be equality and harmony between the two. Human rights are universal, and it is the duty of the state to ensure their protection and promotion, notwithstanding the political, economic, social and cultural differences that exist within the state.

The people and governments of Indonesia occasionally apply human rights differently. The discussion of human rights – not to mention its actual implementation – are not as fascinating as other things are done in large part due to more than three and a half centuries of colonization and imperialism, and over thirty years of autocracy, poverty, and widespread unemployment. Some claim that human rights are supported so long as they are consistent with the social and religious beliefs of the society. Some people believed that human rights only originated in western society. Freedom of religion, freedom of marriage, freedom of gender identity, and abortion include the human rights issues that generate the most controversy [6]. On the strength of Law No. 39 Year of Indonesia, research provides evidence that human rights had been very successfully established in Indonesia, both on the positive and bad sides. Nearly all the rights outlined in the Universal Declaration of Human Rights (UDHR) are included in a separate chapter on human rights in the modified Indonesian Constitution [7]. Additionally, Indonesia permits religious freedom, allowing its people to practice whichever faith they like. In other words, while the government participates in socio-economy issues, there is no force involved in religious decision-making. Based on the findings, it may be concluded that every person in Indonesia is entitled to human rights, which are a gift from God [8].

The negative aspects were seen in civil and political rights, where no nations had made any interventions in Indonesia. The preservation and realization of political rights depend on a constitutional guarantee. In this situation, the exercise of political rights should be fair and equitable regardless of a citizen's colour, religion, ethnicity, social standing, level of money, or even occupation. In other words, each citizen of a state must get equal treatment when exercising their political rights. The guarantee and protection of political rights, as outlined in the 1945 Indonesian Constitution, have not, however, been fully put into practice. It takes place as a result of limitations in the Constitution's implementing rule. As a result, the rules and constitutional guarantees could not be properly applied, which constrained citizens' political rights [9]. By dint of this, Law No. 39 of 1999 is being undermined. Provisions of the Criminal Code continue to place restrictions on the freedom of speech in the media. Even though the Press Law was passed and put into effect in 1999, there have been considerable advancements toward a more democratic press since then. In order to advance press freedom and strengthen the existence of the national press, Article 15 of the Press Law grants the Indonesian Press Council independence from the executive branch [10].

3. Methodology

This research uses a normative research method by analyzing secondary data. Books and journal articles are examined and analyzed to support this work. Key instruments like Law No.39 of 1999, the

bill of rights in Constitution 1945, Universal declaration of Human Rights, International Bill of rights and other international human rights instruments that are germane to this work are used in this piece. Also, the state policies as regards the effective implementation of Law No. 39 of 1999 are considered and reflected upon. A reflection on the social status of the state is carefully made by delving into the practice of human rights in different regions in Indonesia and different treatments that are meted out to certain group of people based on their race. Human rights reports are also analyzed with a view to reaching a conclusion.

4. Finding and Discussion

4.1. The Status of Law No. 39 of 1999 as *Ius constitutum*

With a view to analyzing this legislation, it is instructive to take a general view of the present status of this law as “*Ius constitutum*” and its level of effectiveness. “*Ius constitutum*” is a Latin word derived from another Latin “*Ius Positum*” meaning an existing law or a law that is already established. Indonesia as a member of the United Nations has a moral and legal responsibility to respect, execute, and uphold the Universal Declaration of Human Rights promulgated by the United Nations and several other international instruments concerning human rights and are ratified by the Republic of Indonesia. Article 4 of Law No. 39 of 1999 recognizes and upholds the right to life, the right not to be tortured, and the right to freedom of the individual among others as human rights that cannot be diminished under any circumstances whatsoever. The prohibition against torture is vehemently recognized in international customary law. International customary laws cannot be violated under any circumstances. In other words, no amount of situation and circumstances can justify the violation of laws of this nature. As of now, Law No. 39 of 1999 is incapable of effectively and efficiently holding the current government of Indonesia accountable for violation of Article 4. The Human Rights Report of Indonesia in 2017, 2018, 2019, 2020 and 2021 as revealed earlier points out the illegal acts of torture meted out on citizens by state agents. Article 7 (2) of this law also points out its legally binding nature as regards provisions set forth in international law concerning human rights ratified by the Republic of Indonesia. This provision makes it a legal obligation for Indonesia to uphold international standards in the issues of human rights. According to Article 3 (3) of Law No. 39 of 1999, everyone has a right to the preservation of fundamental human rights and freedoms, without exception. Article 30 provides that everyone has the right to a sense of safety and certainty in addition to protection against the dread of being afraid to do or not do something. In accordance with the law, everyone has the right to own property, either individually or jointly, for the benefit of his or her own growth and that of his or her family, country, and society, according to Article 36 (1). This law resonates the convictions of law makers as they drafted it advocate a free society of equal treatment.

The right to life is an inviolable human right as articulated in Article 3 of Universal Declaration of Human Rights (UDHR). It provides that “Everyone has the right to life, liberty and security of person”. Indonesia has ratified many international human rights treaties including International Covenant on Civil and Political Rights (ICCPR) which in Article 6 (1) provides for the right to life, but the country also fails to ratify Optional Protocol II of the said treaty on the abolition of death penalty. This reflects the state’s lack of commitment to protection of human right to life and undermining Law No. 39 of 1999 and other international treaties. Indonesia, in carrying out the firing squad executions of the Bali Nine on Nusakambangan Island on Wednesday, April 29, 2015 is a classical epitome of how the government holds and values human rights. Since there have been serious drug-related issues in Indonesia recently, the government’s stance on clemency for such offences has become more rigid. All of them were found guilty in 2006 of drug-related offences connected to their individual roles in the Bali Nine heroin smuggling network. The victims of the executions came from a variety of countries, including Australia, Ghana, Indonesia, Nigeria, and Brazil. Many of the countries that have embraced the expanding movement to curtail or abolish the death penalty have signed treaties to that effect and are obligated to follow their terms. In this campaign, Indonesia has joined the international community, but its recent hardline attitude raises issues about its devotion to international law. It will be demonstrated that Indonesia has disregarded its treaty responsibilities, which constitutes a clear violation of international law for which they should be held responsible. The death penalty should never be used in Indonesia, undermining the inalienability of human rights [11]. Death penalty in countries that in countries that have not abolished it may be imposed only on serious crimes and it must not be in violation of this covenant and the Covenant on the Prevention and Punishment of Crime of Genocide. About the Bali Nine Nusakambangan Island case, drug trafficking is not a serious crime in international law [12].

In Indonesia, there is a dichotomy of perception by both the legislature and the judiciary as regards the right to life and death penalty. This is evident because the government ratified international treaties that are against death penalty and paradoxically impose death penalty through the Penal Code [13]. According to Article 10, paragraph 1 Act 2 / PNPS / 1964, death penalty is carried out by firing squad despite Article 9 of Law No. 39 of 1999. In Indonesia, the agitation against death penalty never ends and the lacuna between the provisions of International Covenant on Civil and Political Rights (ICCPR) and reality in the country are quite far apart, particularly in terms of the right to life. The most heinous crimes under Article 6 (2) of ICCPR must be regarded by judges as the only crimes for which the death penalty is an option because the punishment never has a true deterrent effect. The right must be recognized completely as the supreme right from which no derogation is permissible [14]. This must be premised on the principle of *Pacta Sunt Servanda* in international law. *Pacta Sunt Servanda* is a term used for a binding agreement between parties. International Covenant on Civil and Political Rights is recognized in Article 1 (2) of Law No. 12 of Year 2005 as an integral part of the law.

Acts against discrimination is something that is frowned against by the international community and backed by treaties. Universal Declaration of Human Rights provides in Article 7 that “All are equal before the law and are entitled without any discrimination to equal protection of the law”. Article 26 of International Covenant on Civil and Political Rights also holds that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. Indonesia also has a national legislation that deals against discrimination. Article 5 (a) of Law No. 40 of 2008 about Elimination of Ethnic and Racial Discrimination provides that “The elimination of racial and ethnic discrimination is mandatory by providing protection, certainty, and equality of position in law to all citizens to live free from racial and ethnic discrimination”. Article 36 (1) of Law No. 39 of 1999 provides for the right of the people to own a property both individually and in association with others.

Despite these existing laws, there is a contentious issue about the Chinese Indonesians in Indonesia. Chinese Indonesians have frequently been marginalized in Indonesian society. A long period had passed since such an occurrence of prejudice and racial stereotypes were experienced by Chinese Indonesians [15]. Prior to the fall of Soeharto’s regime in 1998, the Chinese were the most racially abused in Indonesia [16]. Historically, this ethnic group has experienced prejudice and discrimination. For example, during the New Order period (1966 - 1998), ethnic Chinese were not categorized as part of the national ethnicity, but as non-indigenous people [17].

In the special region of Yogyakarta, Chinese descendants cannot buy and own land. This has a historical background, and it is linked with the time Indonesia was fighting against the Dutch. The Chinese, during the war, decided to leave Yogyakarta instead of helping to fight the Dutch. The Yogyakarta Sultanate has a discriminatory law ownership policy that applies to Chinese Indonesians and has done so for more than forty years. The only types of land ownership available to Chinese descendants has mainly been Building Rights. The Regional Head Instructions Number K.898/I/A/75 provided details of this policy. Yogyakarta’s native and Chinese-Indonesian populations did not get along well until the New Order Era. The Sultan was compelled to take precautions by Soeharto, who gave Chinese merchants access to several economic facilities. One of these was the 1975 declaration of a prohibition on Chinese nationals owning land in Yogyakarta, which is still in effect today.[18] This is one of the contentious human right issues that remain unsolved in Indonesia as the international community continues to advocate human right to equality and justice. The right to fair hearing calls for an independent and impartial judiciary [19]. In this law, the right to justice is held in high esteem. However, the happenings in the country demonstrates that this law remains susceptible to manipulation by influence from outside parties, including business interest, politicians, the security forces, and officials of the executive branch of the government [20]. The current status of this law is substantially a good law but its practical nature is being undermined by the government and other influential people in their quest for power. It has fallen short of the expectation of the Indonesian people.

4.2. Changes in the Indonesian Society and Its Influence on Human Rights

In order to understand the political framework of the country's human rights laws, it is fitting to first reflect on the history of its administration, which dates to the declaration of the Republic of Indonesia's independence in 1945. The Japanese Colonial Government in Indonesia established a group to investigate the possibility of Indonesia becoming independent as World War II was about to

come to an end marked by the defeat of Japan. However, the group did more than just investigation; it also prepared for independence by drafting a constitution for an independent Indonesia. It was known as the Indonesian Independence Preparatory Agency for Investigation. A constitutional drafting committee, headed by Ir. Soekarno, was established to work on the draft constitution. Within this committee, a second group, a drafting committee, was established and was led by Prof. Soepomo. The Soepomo-Soekarno group and the M. Yamin-Hatta group were divided into two thought groups as a result of the debate within the drafting team regarding whether human rights should be included in the proposed constitution. Individual principles like individuality and human rights were preferred to be excluded by the Soepomo-Sukarno group, who preferred to include familial ideals instead because they were thought to be more consistent with the paradigm shift of the nation [21]. The acts of the country's governing class determine how different regions of the nation think about law and its place in public life. However, an alternation is more likely to be rejected in a democracy that is run by a select group. As a result, they will have a tendency toward traditional or conservative views of the law and will only regard it as an instrument to be used to uphold the state's security and order [22].

After the collapse of Soeharto's New-Order regime on May 21, 1998, changes started emerging in Indonesian society. Recognition of human rights in the Constitution and laws was not an exception to this socio-political shift in the country. The "newly born" Indonesian governments, which capitalize national reform agendas, claim that their governance is distinct from that of "the old" Old Order, and through safeguarding human rights, they symbolize superior electoral democracy and rule of law. What is contradictory, though, is that after more than twenty years of reform, are today's expectations still the same as those that were introduced in 1998? After two decades, the phrase is still in use, despite the extreme reformist spirit that gave rise to democracy has long since faded. During his second term, President Joko Widodo maintained Indonesian Ranham 2021 – 2025 as a fifth phase. As a result, even though the actual state of the national human rights system is ambiguous, the phrase "post-reform" is now used to denote a strong tendency to evaluate it [23]. Ranham is a national agenda that comprises partnership among the government and other institutions that are relevant to this task with the solemn aim of enjoining all ministries and institutions to implement standards of human rights. In order to accommodate social change, the legislation must be developed. If national law creation is started from the law's actual content, it will be more effective. In essence, social change is inevitable for people due to their endless needs. Practically, it will have a big impact on how law is currently frequently written. There will be a conflict that the law cannot resolve since it is incompatible with the social transformation, even yet society needs the law to function. The purpose of law is to always support a dynamic society by not just limiting behaviour and imposing punishment, but also by providing opportunities [24]. As a law, Law No. 39 of 1999 promotes social order by facilitating human interaction. The three goals of the law are justice, benefit, and legal certainty in daily social interactions. As a legal concept that considers the importance of justice in society, the rule of law has philosophical support.

The law does not exist in a vacuum nor does it exist for nothing. It exists for the people. While the law needs the society – specifically the state for its enforcement and effectiveness, the state needs the law for legitimacy. Indonesian society is changing and this has impact on human rights. Indonesia is the world's fourth most populous country and the world's largest archipelago of 17,508 islands, with over 300 ethnic groups speaking over 630 different native languages. At the same time, Indonesia is also the most populous Muslim-majority country in the world. Such a diverse and complex multicultural nation is a good example of the coexistence of various social issues, especially given the fact that there are many remote islands or regions that are difficult to reach and not sufficiently modern. The issue of community development is essential to the stability and overall progress of the country and its awareness of the existence of certain values [25]. This diversity of people is one of the reasons the Indonesian society is undergoing changes. Another reason the society is changing is because of political, ideological and economic movements [26]. The relationship between government politics and economy was brought about by the change of government that brought some major changes to Indonesian society. Both a series of political events and global trends in economic development are in the spotlight. Government policies in Indonesia have historically and still play an important role in shaping the country's economic development trajectory. It does so directly through interventions or indirectly through facilitating the operation of private capital. This inevitably means a coexistence of political and economic priorities, which are not always fully compatible under certain circumstances. A striking example of the need to find a comparison between political ideology and rational science arises from Widjojo Nitisastro [27]. The ideological movement as a third reason for

changes in Indonesia anchors on Pancasila as the foundational philosophical theory of Indonesia. The society is driven by the force of Pancasila which is the grundnorm of Indonesia's political and legal setting.

Suffice it to say that the influence from the elite groups in the change of the Indonesian politics cannot be overemphasized. Both national and sub-national politics of Indonesia – especially in the post-New Order regime – is dominantly a reflection and product of elite groups influence rather than pluralists influence which is the expectation of democracy and good governance. Elite studies are mainly conducted considering the relationship and role of elites in maintaining the political system. The era of “Guided Democracy” in the 1950s had resulted in a regime with strong patrimonial features. The New Order began in the 1970s when the regime sought to consolidate power in the style of patrimonialism, an effort to depoliticize the masses while limiting political competition to non-ideological struggles for power within the elite. However, the New Order's reliance on economic development to gain support from key groups outside the military elite has driven the regime toward more and more regularization and bureaucratization and increasing conflict within the military elite. During this era, the elite also played a role in creating capitalist hegemony. As a result of this, this regime was ultimately able to have political stability underpinned by effective personal leadership factors and capable of reducing the competition and conflict of the elite competition to ensure control over society [28].

In the present Indonesian society, the influence of elites is still paramount. During the Covid-19 pandemic, the government was slow to respond to the pandemic, with Indonesia claiming to be free from Corona Virus in February, while other neighbouring countries were recording the first wave of cases in the region. It should be understood that this reflects the relationship between the state and society in contemporary Indonesia, where the interests of elite are paramount [29]. The past and the present trajectory of the Indonesian political space as analyzed above is a demonstration and affirmation of the impact of the elite group in rendering Law No. 39 of 1999 ineffective as human rights of the people of Indonesia continue to be undermined by the political class. The pluralist group has a minor role – if any at all – in the changes that affect this law.

4.3. The Prospect of Law No. 39 of 1999 as *Ius Constituendum*

Society is in a state of continuous evolution in different ways and therefore, for a law to meet the needs of any society it ought to adjust to the realities and challenges that dominate that society. One of the key factors that affect this law is the pressure exerted on it by the government. Therefore, for this law to become an effective *ius constituendum* it need a strong mechanism to resist the influence of the government. “*Ius constituendum*” is a Latin word meaning “a law that is aspired or wished for”. The issue of human rights needs to be integrated into the development policy of the country so that it will no longer be seen as individuals' concern but a national concern which is superior to the personal ambitions of the elite groups. It is also instructive to strengthen capacity building and develop political and operational guidance on human rights values. This ought to be complemented by strong human rights defenders who are protected by this law so that they can execute their duties without fear of the political class.

Legislators have a natural inclination to blame people who should be following the law for such a rejection of the law. If only, they would think, individuals would understand that abiding by the law is necessary for society to run smoothly and to fulfill the social objectives set by those who appear to be in charge of that society. However, by doing this, the politicians are placing the blame on the incorrect group of people: the failures are mostly the fault of those who create the laws rather than those who should uphold or violate them. It is therefore essential that legislators examine their actions and the nature of the legal instruments they employ. Yet, this assessment is rarely conducted [30]. In dealing with practicality of the law instead of the theory, the first thing we must do is define our terminology, particularly what “effectiveness” means in general. This is best accomplished by condensing my opinion of a legal system. A legal system is, in my opinion, a purposeful structure that exists in a society and whose constituent laws are created by individuals in positions of authority or influence there. The goal of laws is to control or reshape how society's citizens behave, both by defining what is allowed and banned and by providing them with the means to do so through the formation of institutions and legal procedures. The extent to which a law (or specific legal provision) achieves its goals, or serves its intended purposes, serves as a general test of a law's effectiveness. Here, there are two challenges. The first is that, even in a culture where laws are expressly made (via legislation or another method), the intent behind a given law may not always be evident. Additionally, as the law

develops a history, individuals who implement, uphold, or disobey it change the law and its goals to reflect their position of authority and influence. A law exists and changes. A lot of normative statements are not created by individuals who advocate them, but for the person receiving the legal message, what matters is what the person currently emitting the norm intends, not what its creator may have intended. Second, there are societies and laws that place little to no emphasis on expressly published legislation and are said to be governed by customary law. These societies and laws are both highly relevant from a legal and numerical standpoint from the perspective of comparative law.

Also the gap between the pronouncement of this law and its effectiveness is very wide. Therefore, effective knowledge on the implementation of this law needs to be revitalized to counter the current national human right crises and meet the needs of the people. There ought to be a paradigm shift from human rights protection to human rights promotion. By doing this, it will give the state the impetus to protect these rights during their promotion. Even though some laws would be deemed to be a good idea, they would be useless if they could not be put into practice. A law should be enforceable and violators should not escape its arms of apprehension and prosecution.

In a democracy, legislation ought to be based on shared principles. As a result, for a law to be effective, it must be supported by the community; otherwise, people may choose to break the law rather than go against their moral principles. Convincing people to accept what is happening during the legal procedure is the major challenge. People are removed from their daily lives, where they have been embroiled in tense relationships, by the court procedure. They are placed in a setting that is outside of our usual time and space. It causes their lives to change. To convince people to follow a decision that they may believe is against their interests, you must use a lot of pressure. The degree to which the citizens or subjects feel protected by their laws and legal procedures is another measure of "effectiveness." The State and the Citizen or Subject are in conflict in nearly all important judicial cases. Nearly all of the authority is held by the state, and a single person is by nature relatively powerless. How then can you defend yourself if the State claims that "you are suspected of an offense"? For Law No. 39 of 1999 to be effective, it must win the confidence of the people by ensuring that their enjoyment of their human rights is fulfilled.

5. Conclusion

One of the nations that is currently beginning to develop is Indonesia. Obviously, in this situation, it needs help in developing and forming an effective national legal system that it can foster and assist the advancement of human rights and serve, in the words of Roscoe Pound, "as a tool for social engineering." As this situation progresses, a national law will be able to provide direction and guidance for the law. There must be a connection between the government and the society. To comply with the new state legislation, Indonesia, a sovereign nation, ought to have its own national legal products. When examined in the context of Indonesia's current legal system, which was inspired by earlier colonial laws, a different perspective emerges. This shows that Indonesian law is still not independent. In other words, the legal system that underpins the development of a legal system in Indonesia continues to be impacted by the legal systems of the Dutch government and the French government.

Law No. 39 of 1999 about Human Rights in Indonesia has good legal provisions in dealing with the issues of human rights but its effectiveness in terms of implementation is what makes it a weak law. The government and its agencies have through acts of ingenuity rendered this law weak as its provisions are being subjected to violations through national politics at the behest of the political elite. The elite group dominates the effectiveness of this law so as to secure their personal gains. While this law has failed to certain extent to deliver, *ius constituendum* or what this law can be, requires the integration of human rights into national development plan considering the multi-ethnic diversity of the country.

Equality in political, social and legal spheres is a core democratic concept, and in a pluralistic society, how minorities are treated is one of the key signs of how deeply democratic norms have been ingrained. This is particularly true in the case of Indonesia, the fourth most populous country in the world and home to a diverse range of ethnicities, cultures, and religions. Given Indonesia's variety and the persistence of ethnic, cultural, and religious animosities, political reformers and pro-democracy activists across the country must make finding a synthesis between these disparate groups a key goal. Based on my analysis of this law as *ius constitutum* and my prospect of it as *ius constituendum*, Indonesia's international human rights diplomacy ought to be strengthened at the level of Ministry of Foreign Affairs with technical support from the Ministry of Law and Human Rights.

Strong advocacy policy on human rights across all the regions in Indonesia also needs to be in place by the government with a view to enhancing social cohesion, integration, sustenance of development that is decentralized and backed by the rule of law.

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