



Position of The Universal Declaration of Human Rights (UDHR) in The Legal System in Indonesia

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Abstract. This article analyzes the position of the Universal Declaration of Human Rights (UDHR) in the Indonesian legal system with the aim of understanding the applicability of this international legal instrument in the context of national law, especially since the UDHR is often considered as "soft law." This study uses a doctrinal method with an approach that emphasizes the study of legal norms as the main data source. The analysis is conducted on the inclusion of the UDHR in various legal documents in Indonesia, including MPR Decrees, Laws, and Constitutional Court Decisions. The results of the study show that the UDHR appears in various ways in Indonesian legal documents. At the level of MPR Decrees and Laws, the UDHR is included in the "Considering," body, explanation, and appendices. Meanwhile, in Constitutional Court decisions, references to the UDHR are divided into two categories: as the main basis for legal arguments or as supporting arguments. In conclusion, although there are differences in the way the UDHR is included, its existence in legal documents shows the recognition and importance of the UDHR in the Indonesian legal system. This indicates the strong influence of the UDHR in strengthening human rights protection at the national level, despite its non-binding nature.

Keywords: *UDHR, Human Rights, Legal Status*

1 Introduction

The Universal Declaration of Human Rights (UDHR) of 1948 is often considered one of the great achievements in the history of human civilization, especially after the atrocities of the two world wars. This declaration was a major milestone in the formation of human rights norms at the international level [1]. However, the validity of the UDHR was not immediately universally accepted and immediately entered into force without debate [2]. The process of its formulation involved lengthy discussions among countries regarding its form and legal status.

In its formulation, there were differences of opinion among member states of the United Nations (UN) regarding the legal character of the UDHR. Some countries, such as the Soviet Union, only wanted the UDHR to be a non-binding document, which functioned as a moral guide only [3]. On the other hand, Western countries and other supporters want this declaration to have binding legal force, as a basis that can be used in enforcing human rights internationally [4].

Finally, on December 10, 1948, the UDHR was agreed as a universal declaration that was more of a soft law. However, the debate about its legal status continues. Along with the development of international and regional legal instruments related to human rights, some scholars have begun to argue that the UDHR has been transformed into part of customary international law. This has occurred through the acceptance of its principles as *jus cogens*, or basic norms that cannot be challenged [5].

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This study will examine how the UDHR was adopted in the Indonesian legal system. Several previous studies, such as those conducted by Amanwinata, stated that the UDHR has been accepted as an important document whose principles are recognized as *jus cogens* and integrated into the Indonesian legal system [6]. The author intends to develop this opinion further, by analyzing whether the position of the UDHR has been strengthened in the Indonesian legal system and how it is applied to various national legal instruments [7].

Thus, this study focuses on three main aspects: (1) the inclusion of the UDHR in the MPR Decree, (2) the implementation of the UDHR in the Law, and (3) the application of the UDHR principles in the decisions of the Constitutional Court. Through this approach, it is hoped that this study can provide a comprehensive picture of the use of the UDHR in the Indonesian legal system and its contribution to the development of human rights law at the national level.

2 Research Methodology

This study uses a doctrinal legal approach method to analyze the position of the Universal Declaration of Human Rights (UDHR) in the Indonesian legal system. This approach was chosen because the study focuses on a normative analysis of relevant legal documents, namely the MPR Decree, Laws, and Constitutional Court Decisions [8]. The first step in this study is to identify and collect data related to the application of the principles of the UDHR in the three legal instruments. The data collected from these legal documents are then analyzed to evaluate the extent to which the UDHR is recognized and applied in the Indonesian legal system [9]. To enrich the normative interpretation and provide a more in-depth analysis of the position of the UDHR, this study is also supported by relevant secondary legal literature. With this doctrinal approach, this study is expected to provide a comprehensive understanding of the position of the UDHR as part of the *jus cogens* norms recognized in the Indonesian legal system. The results of this analysis will be presented in the form of a conclusion that summarizes the main findings related to the position of the UDHR in the national legal system, as well as suggestions that are expected to strengthen the implementation and acceptance of the UDHR within the Indonesian legal framework.

3 Results And Discussion

Initial Explanation Of The Development Of The Spirit Of Human Rights In The Indonesian Constitution

The influence of the Universal Declaration of Human Rights (UDHR) in the Indonesian Constitution is not a new phenomenon. Since the enactment of the Constitution of the RIS (Republic of the United States of Indonesia) in 1949 to 1950, Articles 7 to 33, especially in "Chapter I Section 5 Basic Human Rights and Freedoms," have included many of the human rights principles contained in the UDHR, while emphasizing the government's obligation to protect them. This inclusion shows the role of the UDHR as a minimum standard in the preparation of commitments to protect human rights in

Indonesia in the period 1949-1950 [10]. When Indonesia returned to a unitary state with the Provisional Constitution (UUDS) in 1950, the commitment to protecting human rights became stronger.[11]

At the national commitment level, the 1950 UUDS was more progressive in adopting human rights norms from the UDHR, by including human rights guarantees in Articles 7 to 34, which are in “Part V of Basic Human Rights and Freedoms.” In fact, the 1950 UUDS added norms on the right to strike and the right to demonstrate. The human rights provisions regulated in the 1949 RIS Constitution and the 1950 UUDS illustrate the direct influence of the 1948 UDHR on the Indonesian constitution at that time.[12]

Indonesia's commitment in the international arena is evident through the ratification of a number of labor conventions and its participation in human rights conventions, such as the 1952 Convention on the Political Rights of Women. The actualization of the commitment of the 1950 UUDS can be seen in the climate that is conducive to press freedom, democratic elections, effective parliamentary oversight of the executive, and the development of human rights thinking before the issuance of the Presidential Decree on July 5, 1959 which re-enacted the 1945 Constitution and dissolved the Constituent Assembly. In the second amendment to the 1945 Constitution, the concept of human rights adopted from the UDHR was also raised as an important reference.

Inclusion Of Udhhr In Mpr Decree And Law

In the realm of legislation in Indonesia, especially during the reform era, the inclusion of the UDHR in legislation varies. For example, in the Decree of the MPR Number XVII/MPR/1988 concerning Human Rights, the section considering letter c states that Indonesia as part of the world community is obliged to respect human rights as stated in the UDHR and other international instruments. In Law Number 39 of 1999 concerning Human Rights, the section considering letter d includes the moral and legal responsibility of the Indonesian people to implement the UDHR [13].

Udhhr In The Law Resulting From The Ratification Of The International Covenant

Laws resulting from the ratification of international conventions, such as the ICESCR and ICCPR (in Law No. 11 of 2005 and Law No. 12 of 2005), as well as the Convention Against Torture (CAT) in Law No. 5 of 1998, directly cite the provisions of the Universal Declaration of Human Rights in the considerations section [14]. Article 2 of Law-11/2005, Law-12/2005, and Law-5/1998 consider the annexes of each covenant as an inseparable part, thus providing recognition of the Universal Declaration of Human Rights. In contrast, several ratifications such as Law No. 7 of 1984 concerning the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) do not explicitly include the Universal Declaration of Human Rights, but its principles are implied in the preamble to CEDAW as part of the annex.

Udhr In The Decision Of The Constitutional Court

Decisions of the Constitutional Court (MK) in Indonesia often refer to the UDHR in their legal considerations. For example, Constitutional Court Decision Number 011-017/PUU-I/2003 cites the provisions of Article 21 of the UDHR regarding non-discrimination as a reference in strengthening the principle of legal equality for every citizen. In other decisions, such as Decision Number 140/PUU-VII/2009 regarding freedom of religion, Article 18 of the UDHR is used as a reference to affirm the guarantee of freedom of religion as a basic humanitarian standard [15].

Through these various decisions, it is seen that the UDHR serves as a significant reference in legal arguments that focus on the recognition of basic rights and universal values upheld by Indonesia. The use of the UDHR in the Constitutional Court's decisions shows that this declaration remains relevant as a guideline in the development and protection of human rights in Indonesia to this day.

4 Conclusions and Suggestions

This article is written with a simple premise: how is the validity of the UDHR as a document that was previously soft law in a number of legal instruments in Indonesia. From the exploration conducted by the author, a number of patterns of inclusion of the UDHR were found in legal instruments in Indonesia as well as in Constitutional Court Decisions. Without the need to repeat, the variety of uses of the UDHR in these documents affirms the opinions of Humphrey and Amanwita as previously reviewed. Through the practice of including the UDHR in legal instruments in Indonesia, it can be concluded that the UDHR itself can be viewed as one of the sources of Indonesian law.

The difficulty arises when placing the context of the use of the UDHR in a more theoretical level, namely by placing this discussion in the context of the debate on monism and dualism of national law towards international law. The debate on this polemic has been very well portrayed by Simon Butt and will not be repeated here. The practice of including the UDHR as mentioned widens the space for monism of the national legal system in international law or at least not as thin as Butt conveyed. For this reason, this article shows that with the space of monism - at least towards the UDHR - the UDHR should be able to be used as a source both in the creation and enforcement of law.

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