

## Understanding The Limitations Of Human Rights In Indonesia

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**Abstract.** Every individual bears the responsibility of honoring the rights of others within the context of national and state life. This research aims to illustrate that while exercising their rights and freedoms, individuals are obligated to adhere to legal constraints. This adherence is intended to ensure the acknowledgment and respect for the rights and freedoms of others, as well as to fulfill equitable demands in alignment with moral considerations, security imperatives, and the maintenance of public order within a democratic society. This study employs a qualitative research method with a descriptive approach. The systematic, factual, and timely data collection is conducted following the research framework and objectives. The findings suggest that the current conceptualization of limitations on human rights may evolve in the future. The crucial question now pertains to how advocates for a shift in thought construction can effectively leverage the constitutional mechanisms available to them.

**Keywords:** Law, Human Rights.

### INTRODUCTION

Human rights are inherent and universal rights that are fundamental to every individual, enduring by nature. It is imperative to protect, respect, and uphold these rights, preventing any form of neglect, reduction, or deprivation by any entity. Additionally, individuals bear fundamental obligations, as their interconnectedness in social, national, and state life is integral. Essentially, humans as social beings are destined to coexist within communities or specific societies, emphasizing the shared nature of their existence. Every individual is granted equal status and position before the law, embodying the principle of equality before the law. Therefore, beyond the rights safeguarded by legal frameworks, individuals also carry the responsibility to honor the rights of others within the framework of national and state life.

### METHODS

This research was a legal study that utilized several approaches to address the examined issues, including (1) the statutory approach, (2) the conceptual approach, (3) the comparative approach, and (4) the historical and philosophical approaches. In this study, the data were analyzed qualitatively, where collected written legal materials were systematically organized based on the researched problems. Subsequently, a thorough analysis and elaboration of these legal materials were conducted in alignment with the identified issues, incorporating pertinent theoretical frameworks. To address the identified problems, a comprehensive assessment was

carried out on the systematically organized legal materials, ensuring precise elucidation of their meanings, positions, and legal implications.

## DISCUSSION

The imposition of human rights restrictions is acknowledged in the practices of nations, explicitly mandated in the Universal Declaration of Human Rights on December 10, 1948, and codified in the International Covenant on Civil and Political Rights. In Indonesia, a parallel framework for the regulation of human rights limitations is evident in the 1945 Constitution and various other national legal provisions. From a legal standpoint, the specification of regulations about human rights limitations is delineated in several key provisions, as follows.

The first is Article 29 Paragraph 2 of the Universal Declaration of Human Rights (UDHR), which articulates the following provision:

*“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely to secure recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.”*

The second is Article 4 of the International Covenant on Civil and Political Rights (ICCPR), elucidating the following guideline:

*“In a time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.”*

The third is Article 36 of the Human Rights Charter (Indonesia’s People’s Consultative Assembly Decree No. XVII/MPR/1998, dated November 13, 1998), which states as follows:

*“In the exercise of their rights and freedoms, individuals are duty-bound to submit to the limitations stipulated by the law, solely with the intent of securing the acknowledgment and reverence for the rights and freedoms of others. This also encompasses meeting equitable demands following moral considerations, security imperatives, and public order within a democratic society.”*

The fourth is Indonesia’s Law No. 39/1999 concerning Human Rights, which is delineated across various articles, as outlined below.

Article 9 Paragraph 1:

*“Every person is entitled to the right to life, the preservation of life, and the enhancement of one’s standard of living. This right to life extends even to unborn infants or individuals under a death sentence. In extraordinary circumstances, specifically, to safeguard the mother’s life in cases of abortion or under a court decision in instances of the death penalty, such actions may still be permissible. Only in these two instances can the right to life be constrained.”*

Article 70:

*“In the exercise of their rights and freedoms, every individual is obliged to comply with the limitations prescribed by the law, to guarantee the recognition and respect for the rights and freedoms of others. This also extends to meeting fair demands in alignment with moral considerations, security imperatives, and public order within a democratic society.”*

Article 73:

*“The rights and freedoms stipulated in this law may only be restricted by and under the law, solely to ensure the recognition and respect for human rights as well as the fundamental freedoms of others, morality, public order, and the national interest.”*

The fifth is Indonesia’s Constitutional Court Decision No. 065/PUU-II/2004 regarding the Material Review of Indonesia’s Law No. 26/2000 concerning Human Rights Courts, filed by Abilio Jose Osario Soares as the applicant.

Court Opinion:

- Article 28I Paragraph 1 of the 1945 Constitution includes several rights explicitly formulated as “rights that may not be diminished under any circumstances,” including the right to life and the right not to be prosecuted based on retroactive laws.
- Article 28I Paragraph 1 must be read in conjunction with Article 28J Paragraph 2, indicating that the right to life and the right not to be prosecuted based on retroactive laws are not absolute and can be restricted as long as it is regulated by law.

The sixth is Indonesia’s Constitutional Court Decision No. 2-3/PUU-V/2007 concerning the Constitutional Review of Indonesia’s Law No. 22/1997 regarding Narcotics considering the 1945 Constitution of the Republic of Indonesia. In the material review of Indonesia’s Law No. 22/1997 concerning Narcotics considering the 1945 Constitution, utilizing the method of “*sistematische interpretative*” or systematic interpretation, the Court asserts as follows.

*“... that Human Rights stipulated in Article 28A to Article 28I are ‘subject’ to limitations regulated in Article 28J of the 1945 Constitution.”*

Based on international community practices, national legal provisions, and judicial practices in Indonesia, it can be concluded that both “non-derogable rights” and “derogable rights,” as regulated in Article 28A to Article 28I of the 1945 Constitution and Law No. 39/1999 concerning Human Rights, “may be restricted” as long as such restrictions are stipulated by law.

In the national legal framework of Indonesia, Article 1 Number 1 of Law No. 39/1999 concerning Human Rights delineates the following.

*“Human rights constitute an inherent set of entitlements linked to the essence and existence of humans as creatures of the Almighty God. They are granted gifts demanding respect, elevation, and protection by the state, law, government, and every individual for the preservation of human dignity and the safeguarding of honor and integrity.”*

Continuing to Article 2, it is articulated as follows:

*“The Republic of Indonesia acknowledges and upholds human rights and basic freedoms as inherent rights inseparable from and intrinsic to humans. These rights must be safeguarded, respected, and enforced for the enhancement of human dignity, well-being, happiness, intelligence, and justice.”*

When examining the formulations of these two articles, it appears as if human rights are absolute or unconditional, not subject to limitations. This impression is further fortified by the provision in Article 4, which states as follows.

*“The right to life, the right not to be subjected to torture, the right to personal freedom, freedom of thought and conscience, the right to religious beliefs, the right not to be enslaved, the right to be recognized as an individual, equality before the law, and the right not to be prosecuted based on retroactive laws are human rights that cannot be diminished under any circumstances and by anyone.”*

The formulation of this article is “precisely the same” as the content of Article 28I Paragraph 1 of the 1945 Constitution (resulting from the Second Amendment, on August 7-18, 2000), which regulates “non-derogable rights” or rights that cannot be diminished under any circumstances. However, it also regulates the “limitation of rights” considering the content of Article 28I Paragraph 1. As formulated in Article 28J Paragraph 2, it states as follows.

*“In the exercise of their rights and freedoms, every individual is obligated to adhere to limitations prescribed by law with the sole intention of ensuring the acknowledgment and respect for the rights and freedoms of others, and to fulfill fair demands following moral considerations, religious values, security, and public order in a democratic society.”*

From the formulations of Article 28I Paragraph 1 and Article 28J Paragraph 2, there appears to be a seeming contradiction between the regulation of “non-derogable rights” and the “limitation of rights” in these two articles. However, according to Lukman Hakim Saefudin and Patrialis Akbar (former members of Ad Hoc Committee I-BP MPR) tasked with preparing the amendment to the 1945 Constitution, during the Constitutional Court hearing on May 23, 2007, they stated that the references for limiting human rights in Indonesia are Indonesia’s People’s Consultative Assembly Decree No. XVII/MPR/1998 and Law No. 39/1999 concerning Human Rights. Subsequently, during the Second Amendment to the 1945 Constitution, the regulation of limiting human rights was adopted into Article 28J Paragraph 2. They both concluded as follows.

*“... The regulation of human rights in the 1945 Constitution is not entirely unrestricted; instead, it is permissible to limit it as long as the restriction is stipulated by law.”*

The official interpretations provided by the Constitutional Court in several of its rulings concerning human rights limitations in Indonesia have clarified that none of the human rights in Indonesia are absolute and without bounds. The author fully comprehends that many parties perceive the human rights framework in Indonesia as conservative, especially when compared to other countries worldwide. Furthermore, employing one of the twenty-three legal

constitutional interpretations—as explained by Professor Jimly Asshiddiqie in his book *“Introduction to Constitutional Law”*—undoubtedly yields a diverse range of interpretations.

Nevertheless, Constitutional Law should be construed as anything that has been ratified as a constitution or law by the authorized institution, regardless of its adherence to a particular theory, its likeness or disparity with legal systems in other countries, and its alignment with idealistic aspirations or lack thereof. This is what Professor Mahfud M.D. refers to as “Legal Politics” in his latest book titled *“Debates on Constitutional Law Post Constitutional Amendment.”* According to him, Indonesian Constitutional Law does not have to be the same or different from theories or those applicable in other countries. The prevailing legal status of what is formally designated as constitutional law remains unaffected by any judgments cast upon it.

Despite all the aforementioned considerations, it is crucial to emphasize that the constitution must be able to adapt to the evolving times, often described as a living constitution. Therefore, the current conception of limitations on human rights may change in the future. The crucial aspect now lies in how those advocating for a shift in thought construction towards a specific direction can utilize the available constitutional avenues, such as pursuing constitutional amendments, legislative reviews, judicial reviews, constitutional conventions, judicial jurisprudence, or even contributing to the development of legal doctrine as *ius communis opinio doctorum*.

## CONCLUSIONS

1. Constitutionally regulated human rights are subject to limitations as long as they are stipulated by law, as emphasized in Article 28J, serving as the concluding provision for the comprehensive framework of human rights regulations in the 1945 Constitution. While human rights can be constrained, such limitations must not be discriminatory, impede, or legitimately eliminate equal opportunities before the law and government.
2. In several rulings, the Constitutional Court has articulated its position on the interpretation of Article 28J Paragraph 2, asserting that human rights can be restricted, but such restrictions require seven conditions. Firstly, they must be regulated by law. Secondly, they must be based on very strong, reasonable, and proportional grounds, avoiding excessiveness. Thirdly, they must be carried out to ensure the recognition and respect for the rights and freedoms of others. Fourthly, they must meet fair demands following moral considerations, religious values, security, and public order in a

democratic society. Fifthly, they must not be discriminatory. Sixthly, they must not unlawfully obstruct or eliminate citizens' right to equal opportunities in governance. Seventhly, they are related to the right to vote, with restrictions based on considerations of incapacity, such as age, mental condition, and impossibility, for example, due to the revocation of voting rights by a legally binding court decision, generally individual and not collective.

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