

MAKALAH



Human Rights for judges - Why judges must be experts

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Human Rights for judges – Why judges must be experts

The intentions and expectations of this training

- Equip the Judges with knowledge about both Human Rights and its relation to human rights
- Motivate the Judges to achieve a higher Human Rights understanding and supply them with an incentive to go further in learning and understanding Human Rights
- Secure a better Human Rights enforcement in Indonesia by targeting a key stakeholder in the institutional framework responsible for Human Rights enforcement – the Courts
- Secure a higher Human Rights compliance in Indonesia by teaching Judges the Indonesian obligations towards the people under its jurisdiction and towards the international community of states
- The end goal is to make the Courts able to take all relevant Human Rights into consideration in every case submitted to them, and that all verdicts, rulings and judgements given by the court shall be in accordance with all Human Rights obligations

What are Human Rights?

- Definition of Human Rights

“Basic **rights and freedoms** enjoyed by **all persons** under **the jurisdiction** of the state, **towards the state**, in accordance with **international agreements and state practice**”

Who are obligated according to Human Rights? Who enjoy the rights and freedoms?

- Basic rights and freedoms enjoyed by all persons under the jurisdiction of the state”.
The bearers of the rights and freedoms of Human Rights are the persons on the territory of the state. All individuals. **Everyone.**
 - Criminals and non-criminals
 - Foreigners
 - Minorities
- “towards the state”, States are the Human Rights duty bearers
- What does this imply for the state?

The State and State Agents

■ State

- Territory
- Population
- Central Government
- Recognition

■ State agent

All person exercising
authority mandated by
the state, when they are
acting in this capacity

Examples

State obligation to respect, protect and fulfil

The Indonesian Human Rights Act Article 71

“The government shall respect, protect, uphold and promote human rights as laid down in this Act, other legislation, and international law concerning human rights ratified by the Republic of Indonesia.”

This is in accordance with international declarations

The states negative obligation: The duty to respect

- Not interfere in the people's enjoyment of rights
 - With laws that restrict
 - Example: Law banning a religious group. Joint ministerial decree banning Ahmadiyah
 - With activity from state agents
 - If a person exercising authority mandated by the state, when they are acting in this capacity.
 - Not when the state agent is acting privately
 - Example

The states positive obligation: The duty to protect

- Protect with legislation
 - Laws protecting the physical integrity of their citizens
 - Torture, no one shall escape charges because of lacking legal infrastructure. Papua-torture case.
- Protect with enforcement of laws
 - Effective investigation
 - Indictments
 - Court trials
 - Leading principle: everyone is equal before the law
- Protect physically
 - Protect individual and groups who are under threat
 - Ahmadiyahs

National obligations

■ Constitutional rights

Chapter XA Human Rights

- Most of the important human rights

Article 24

- Mentions the independence of the judiciary

■ Important laws

Law nr. 39 of 1999 the Human Rights Act

Provide citizens with numerous entitlements

Are these entitlements enforceable by the courts?

Law nr. 26 of 2000 the Human Rights Court Act

Not really a human rights law, but an international criminal Court.

Massive and widespread violation of some human rights: Genocide and Crimes against Humanity.

How is the enforcement?

Implementation Laws.

Implementation of ICCPR and ICESCR

Other Human Rights relevant laws

■ What about implementation and enforcement

International obligations

- Treaty-obligations
 - Entered into force by the state's own consent - Ratification
- Non-treaty obligations
 - Binding customary law and jus cogens
- Vienna Convention Article 27
 - "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty..."
- States *should honour their international commitments and international rules*

Why have the courts a central role in realising human rights?

- **The realisation of rights and freedoms**
 - The Court is the expert in understanding the legal content of the rights
 - The Court is mandated to make binding decisions
- **Watchdog of the Constitution and the laws**
 - The courts control the other state powers
- **Democracy**
 - Rights of the minority from unjust treatment
- **Individual's grievance mechanism**
 - The right to have ones rights tried by an independent and impartial tribunal
 - Last resort to undo injustice – a remedy

The conduct of Courts

- Requirements regulated in several provisions both in international and national human rights instruments
- Pre trial requirements ICCPR art. 9
 - Arrest, detention and remand
- During trial ICCPR art. 14
 - Impartial and independent
 - Fair trial
- After trial
 - Treatment of prisoners

What if the Court fails to realise human rights?

- The Golden Rule
- Can anyone else be trusted to promote basic rights, equally enjoyed by all persons?
- Respect for human rights is perceived to enhance peaceful coexistence
- Conflict
- What is injustice? Who decides?
- Fairness

What we will do during the training

- The programme

Terima Kasih!