

HUMAN RIGHTS AS THE PARAMETER OF PUBLIC POLICY LEGITIMATION IN THE RECH STAAT

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ABSTRACT

Human rights constitute a fundamental principle in a democratic state governed by the rule of law and function both as a limit and a benchmark for the legitimacy of the exercise of state power in the formulation of public policies. In practice, however, public policies are often driven more by political considerations, security concerns, and administrative efficiency, which may lead to the neglect of human rights protection standards. This study aims to analyze the role of human rights as a parameter for the legitimacy of public policies within the framework of a rule-of-law state and to assess their implications for the protection of citizens' rights.

The research employs a normative legal research method, using statutory, conceptual, and analytical approaches to national and international human rights instruments. The findings indicate that the legitimacy of public policies cannot be determined solely by their legal-formal validity, but must also be assessed based on their conformity with human rights principles, such as legality, proportionality, non-discrimination, and the protection of fundamental rights. Public policies that are not grounded in human rights standards risk producing excessive restrictions on rights and undermining the principles of the rule of law. Furthermore, international human rights instruments, particularly the International Covenant on Civil and Political Rights (ICCPR), provide an essential normative framework for evaluating the lawfulness of state-imposed limitations on rights. Accordingly, this study emphasizes that human rights must be positioned as the primary parameter in the formulation and implementation of public policies to ensure a balance between public interests and the protection of individual rights in a state governed by the rule of law.

Keywords: Human Rights; Public Policy; Rule of Law; Legitimacy.

INTRODUCTION

Human rights is main normative foundation in democratic nations that has function as the constitutional limitation toward the use of state power. Under the *rechstaat* framework, Public power is not exercised freely and absolutely, but is constrained by law oriented toward the protection of human dignity¹. Therefore, every state action – including in the formulation and public policy implementation - Oleh karena itu, setiap tindakan negara—termasuk dalam perumusan dan pelaksanaan kebijakan publik— It must be justifiable not only in terms of formal legality, but also substantively based on human rights principles. This concept situated human rights as an integral element in legitimation of state power, Konsepsi ini menempatkan HAM sebagai elemen integral dalam legitimasi kekuasaan negara, as well as serving as an evaluative parameter for public policies in a democratic state²

In Indonesian context, the acknowledgement and protection of human rights have a compelling constitutional foundation through chapter XA of Indonesian Constitution year 1945. In addition, Indonesia has ratify a range of human rights instrument, including the International Covenant on Civil and Political Rights (ICCPR), which reinforces the state's obligation to respect, protect, and fulfill the fundamental rights of its citizen.³ That ratification affirms that the human rights limitation may only be undertaken on the basis of law, for legitimate aims, and through measures that are necessary and proportionate in a democratic society. Therefore, human rights not only function as a moral norm or declarative, but also as a legal standard which is binding in the implementation of public policy.⁴

However, in the the practice of administering modern government, public policy is frequently formulated and implemented on the basis of pragmatic considerations, like politic stability, national security, administrative efficiency, dan economic growth. In certain situations, those considerations could potentially relegate human rights from a fundamental principle to merely a complementary variable⁵ This phenomenon is evident in the emergence of public policies that restrict civil liberties, expand the authority of state apparatuses, or reduce public access to justice, without being accompanied by adequate human rights-based justification. This condition indicates the existence of a normative problem in the relationship between state power and the protection of individual rights in a democratic rule-of-law state.⁶

A number of previous study have analyze relation between *rechstaat*, public policy, and human rights from various perspective. Modern *Rechstaat* require integration between legal supremacy principle, power limitation, and human rights protections as a as an inseparable unity.⁷ The significance of preventive and repressive legal protection mechanisms as

¹Iskatrinah, I. (2019). Studi Kebijakan Publik Bagi Pemenuhan Hak-Hak Penyandang Disabilitas Di Indonesia Dalam Perspektif Hak Asasi Manusia. *Jurnal Komunikasi Hukum (JKH)*, 5(1), 125. <https://doi.org/10.23887/jkh.v5i1.16757>

²Joko Sriwidodo. (2023). Kebijakan Publik Yang Berbasis Hak Asasi Manusia. *KRTHA BHAYANG-KARA*, 17(2). <https://doi.org/https://doi.org/10.31599/krtha.v17i2.2514>

³Nur Jasmine, A. I., Meili, E., Septira, G. A., Syahidah, N., Willian, R., Mulyadi Nugraha, D., & Ruyadi, Y. (2023). Sulitnya Penerapan Hak Asasi Manusia dalam Implementasi Kebijakan Publik di Indonesia. *Inspirat : Inspirasi & Strategi : Jurnal Kebijakan Publik & Bisnis*, 14(01). <https://doi.org/www.ejournal.isha.or.id/index.php/Inspirat>

⁴Damar, A. A. I., Hati, P., Putu, N., Yuliantini, R., Gede, D., & Mangku, S. (2019). Tinjauan Yuridis Terkait Permohonan Suntik Mati (Euthanasia) Ditinjau Dari Kitab Undang-Undang Hukum Pidana. In Tahun (Vol. 2, Number 2).

⁵Waldron, J. (2017). *The Rule of Law*. Cambridge University Press.

⁶Donnelly, J. (2020). *Universal Human Rights in Theory and Practice* (4th ed.). I. Cornell University Press

⁷Widiyawati, E. (2024). Hak Asasi Manusia Dalam Perkembangan Rule Of Law. Sultan ADAM : JURNAL HUKUM DAN SOSIAL, (2). <https://doi.org/https://yptb.org/index.php/sultanadam/article/view/1075>

instruments for regulating governmental discretion in public policy. The research indicates that many public policies in Indonesia are still predominantly legalistic-formal and have not yet fully incorporated the principles of proportionality and non-discrimination.⁸ Furthermore, it highlights the role of international human rights instruments as normative standards for assessing limitations on rights imposed by the state, particularly within the context of national public law.⁹ The research also reveals the weakness in integration of human rights paradigm in the legislation process and public policy that lead to the increase of conflict between state and the citizen.¹⁰

Nonetheless, those studies generally focus in certain aspect of human rights and public policy, like constitutional dimension, administrative law protection, or specific area policy. Most studies have not systematically positioned human rights as a parameter of legitimacy and public policy in the whole framework of democratic *Rechtsstaat*.¹¹ Consequently, analysis of how human rights can be used as a normative yardstick to assess the legality, rationality, and proportionality of public policies remains relatively limited, particularly in the context of developing countries such as Indonesia, which is currently experiencing processes of democratization and legal reform.¹²

Based on comprehensive literature review, state of the art of this study reveals a tendency for analysis to remain fragmented and not yet conceptually integrated. In international study, human rights are generally positioned as an ethical standard, universal normative value, or good governance principle that function as the moral guidance in governance. That approach, even though important, often remains at the normative-abstract level and has not yet been systematically used as legitimation assessment tool of public policy in the framework democratic *Rechtsstaat*.¹³

Meanwhile, in the national level research tend to emphasize to the juridical normative analysis toward the public policy, specifically with regard to the policy making authority, the procedure of legislation making, along with the alignment of policy to the positive norm. However, those approach still relatively limited in integrated human rights paradigm as a comprehensive evaluative instrument, above all in assess the substantive legitimation of public policy toward the protection of citizen constitutional rights. Accordingly, public policy is frequently considered has a formal legitimation, but this does not necessarily mean that it has substantive legitimation under human rights perspective.

Thus far, there are still very limited studies that explicitly, systematically, and comprehensively construct human rights as parameters of public policy legitimation in the democratic state. Particularly, only a few studies have comprehensively linked constitutional norms to state obligation under international human rights instruments, as well as state' empirical policy in a whole analysis framework. The absence of this framework leads to an inadequate basis for

⁸Nainggolan, F. M. W., Riyanto, L. C., & Dewantika, C. (2025). Analisis Normatif Atas Kedudukan dan Implementasi Hak Asasi Manusia dalam Sistem Ketatanegaraan Indonesia. *RIGGS: Journal of Artificial Intelligence and Digital Business*, 4(4), 987–991. <https://doi.org/10.31004/riggs.v4i4.3526>

⁹Yuliantini, N. P. R., Mangku, D. G. S., & Desy, P. (2022). Analysis Of Workload, Rest Rights, And The Rights To Enjoy Entertainment In Gender Differences. *Jurnal Komunikasi Hukum (JKH)*, 8(1), 469–480. <https://doi.org/10.23887/jkh.v8i1.47056>

¹⁰Yuliantini, N. P. R. (2010). Anak Tidak Sah Dalam Perkawinan Yang Sah (Studi Kasus Perkawinan Menurut Hukum Adat Bonyoh). *Jurnal IKA*, 8(2).

¹¹Anas, Y. (2020). Materi Pokok Bidang Studi Hukum dan HAM . Lembaga Ketahanan Nasional Republik Indonesia .

¹²Butar, F. (2025). Bunga Rampai Refleksi Hukum dan Hak Asasi Manusia Kontenforer. Airlangga University Press.

¹³Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Diseminasi Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dalam Peningkatan Kesadaran Hukum Masyarakat Di Desa Sidetapa Terkait Urgensi Pencatatan Perkawinan Untuk Memperoleh Akta Perkawinan. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 8(1), 138-155.

evaluating human rights in a public policy, above all in the context of citizen human rights limitation by state that repeatedly justified on behalf of public interest, security, or stability. Based on that situation, this research originality is found in the effort to build a normative framework that positioned human rights as the main evaluation standard in asses public policy legitimation, both during the policy formulation and implementation processes. This research positioned human rights not only as an ethical value, but also as an enforced legal instrument and operational in asses state action, particularly in the context of Indonesia as *Rechtsstaat* that founded on constitution and democratic principles.

In line with the background and the identified research gap, this research objective is to scrutinize how the human rights principles – such as legality, objective legitimation, proportionality and nondiscrimination – may serve to assess the state authority limitation in limited or derogate citizen ‘rights through public policy. This analysis is further intended to examine the implication of applying human rights parameter for the enhancement of constitutional democracy, the accountability of state authority, and the protection of human dignity as a fundamental value. Accordingly, this research is expected to provide a significant theoretical contribution for the development of constitutional law and human rights law, above all by enriching the discourses concerning public policy legitimation in a democratic *Rechtsstaat*. Moreover, this research is expected to propose practical contribution for the policy maker, government institution, and supervisory body in designing and implemented public policy that are not only legally valid, but also just, legitimate and oriented to human rights protection.

METHOD

This research employs a qualitative method using normative legal research (*doctrinal legal research*) focusing on the examination of legal norms and legal principles within the context of human rights protection. The normative approach was chosen because this study aims to examine the transformation of Indonesian criminal law through a systematic review of substantive criminal law and criminal procedure law, as well as to evaluate their conformity with human rights standards at both the national and international levels. In this study, law is viewed as a set of norms contained in legislation, legal doctrines, and international legal instruments, rather than merely as a social phenomenon or behavior.¹⁴

As a library-based study, this research does not employ population and sample concepts in the empirical sense. Instead, legal materials are positioned as the primary object of analysis. The object of the research includes criminal law norms, criminal procedural law, and human rights principles relevant to issues of criminalization and due process of law within a democratic rule-of-law state. Accordingly, the research is directed toward examining the normative coherence between national criminal law regulations and human rights standards.

The collection of legal materials was conducted through document analysis by closely examining relevant legislation, legal doctrines, and international human rights instruments. This examination was intended to identify the structure of legal regulation, its normative meaning, and the juridical implications of criminal law reform for the protection of human rights within the criminal justice system.¹⁵

This research applies several complementary approaches. The statutory approach is used to examine positive legal norms governing criminal law and criminal procedure in Indonesia. The

¹⁴Mangku, D. G. S., Rai Yuliantini, N. P., & Lasmawan, I. W. (2022). Legal Protection for People with Disabilities in Indonesia in the Perspective of Justice Theory. *Unnes Law Journal*, 8(2), 245–262. <https://doi.org/10.15294/ulj.v8i2.52406>

¹⁵Mangku, D. G.S., & Astiti Narayani, K. (2022). The Dangers of The Crime of Genocide: International Law Review. *Journal of Judicial Review*, 24(1), 81–90. <https://doi.org/10.37253/jjr.v24i1.6467>

conceptual approach is employed to analyze key concepts in criminal law and human rights, including due process of law, fair trial, and limitations on criminalization in a democratic constitutional state. In addition, the study also adopts a limited comparative approach by referring to international legal standards and practices, particularly those derived from the International Covenant on Civil and Political Rights (ICCPR), to assess the compatibility of national legal regulations with international human rights norms.¹⁶

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include national legislation concerning criminal law and criminal procedure, the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, and relevant international human rights instruments. Secondary legal materials include legal textbooks, academic journal articles, institutional reports, and expert opinions related to criminal law reform and the protection of human rights.

All legal materials were analysed qualitatively through a legal hermeneutic approach by placing legal texts within their philosophical, systematic, and normative contexts in order to critically interpret the meaning and objectives of legal regulation.¹⁷ Through this approach, the research seeks to reveal the normative coherence and implications of criminal law transformation for the protection of human rights within the Indonesian criminal justice system.

ANALYSIS AND DISCUSSION

Human Rights as the Normative Limitation of State Authority in Making Public Policy

In a democratic state, state authority in forming and applying public policy is not absolute. State authority limited by legal norm to preclude abuse of power as well as to guarantee the protection of citizen's fundamental rights. One of the most important normative limitation is human rights.¹⁸ Human rights not only perceived as a set of individual rights inherent to human beings, but also a normative standard that direct and limited state action, particularly in the process of policy making. Therefore, human rights existence become a key element of in assess the legitimacy of public policy in Rechtsstaat. From a conceptual perspective, rechtsstaat positioned law as foundation while also as a limitation for state authority¹⁹. This principle implies that every governmental action, including the public policy, shall have a legitimate ground that is not arbitrary to the fundamental value that protected by law, above all is human rights. In this framework, human rights functioned as a constitutional norm and moral that limited state discretion. The state is not justified in exercising its authority arbitrarily, even though in the name of public interest, political stability, and policy effectiveness. Every contrast, every public policy must be evaluated considering the principle of respect, protection and fulfilment for human rights.²⁰

¹⁶Nazifah, Mangku, D. G. S., & Yuliantini, N. P. R. (2021). Fulfillment of Labor Rights for Persons with Disabilities in Indonesia. *International Journal of Criminology and Sociology*, 10, 272–280. <https://doi.org/10.6000/1929-4409.2021.10.33>

¹⁷Febriana, N. E., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Upaya Perlawanan (Verzet) Terhadap Putusan Verzetek Dalam Perkara No. 604/PDT. G/2016/PN. SGR Di Pengadilan Negeri Singaraja Kelas 1B. *Ganesha Law Review*, 2(2), 144-154.

¹⁸Agus, P., Sanjaya, H., Gede, D., Mangku, S., Putu, N., & Yuliantini, R. (2019). Perlindungan Hukum Terhadap Gedung Perwakilan Diplomatik Dalam Perspektif Konvensi Wina 1961 (Studi Kasus Ledakan Bom Pada Kedutaan Besar Republik Indonesia (Kbri) Yang Dilakukan Oleh Arab Saudi Di Yaman). In *Tahun* (Vol. 2, Number 1).

¹⁹Raharjo, S., Anindita, A., & Karim, A. (2023). Tinjauan Komprehensif Hak Asasi Manusia Dalam Konteks Sistem Hukum Tata Negara. *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia*, 2(2), 22–35. <https://doi.org/10.37631/jrkhm.v2i2.28>

²⁰Yuliantini, R. (2021). Legal Protection Of Women And Children From Violence In The Perspective Of Regional Regulation Of Buleleng Regency Number 5 Year 2019. In *Jurnal Pendidikan Kewarganeg-*

In modern governance practice, public policy frequently influenced by politic consideration, economy and administrative. However, those consideration domination without normative control may lead to the undermine of citizen rights, particularly the vulnerable and minority group. Therefore, human rights serve as corective instrument vis-à-vis the logic of power and majoritarianism. Under constitutional democracy, the will of the majority cannot be utilized as justification to violate individual human rights. This principal assert that public policy legitimation cannot be determined by political support or by the formal procedures of its enactment, but also by the substantive of the policy and its implication toward human rights²¹. Human rights fuction as a normative limitation of state authority may be understood through concept of power limitation. Under Rech Staat doctrine, power limitation is a precondition to guarantee human freedom and dignity. Human rights serve as the main standard for assessing the extent of state intervention in citizens' lives. State intervention through public policy may only be justified if it meets certain principles that have been widely recognized in constitutional law and international human rights law, namely legality, legitimate aim, necessity, and proportionality.²²

The legality principle requires that every public policy has a clear and accessible legal foundation. Policies that restrict or affect human rights cannot be issued solely based on administrative discretion without adequate normative legitimacy. Legality is not merely concerned with the existence of written rules, but also with the quality of the law itself, including the clarity of norms, legal certainty, and consistency with the constitution. Therefore, public policies that violate human rights may still be considered normatively invalid even when they have been enacted through formal procedures²³. In addition to legality principles, public policy shall have legitimate aims. In human rights context legitimate aim concern with recognize public interest, such as national security, general order, public health or the protection of the rights and freedoms of others. However, such aims must not be interpreted broadly and abstractly in a manner that creates opportunities for excessive restrictions on human rights.

Necessity principle requires the existence of a rational connection between the policy 'objective and the method used to achieve it. The state must demonstrate that any human rights restriction policies are genuinely necessary and that no alternative measures with less detrimental impact on citizens' rights are available. In many cases, state failure to explore alternative policy that are more compatible with human rights demosntrated the weak comitment to the Rech staat principle. Therefore, necessity analysis is a crucial instrument to asses wether the public policy is truly proportionate or instead repressive in nature.

The principle of proportionality represents the culmination of normative review of public policies that imply human rights. This principle needs a fair balance between the public interest pursued and the individual rights protection. Public policies must not impose excessive restrictions on human rights compared to the expected benefits. Under this framework, human rights serve as "a normative safeguard" that inhibit the state from sacrificing human rights on behalf of efficiency or illusory stability. The proportionality test also affirms that, in a state governed by the rule of law, good objectives cannot justify means that violate human rights.

Human rights role as a normative constraint on state authority has been further strengthened through the constitutionalizing of human rights. Many countries, including Indonesia,

araan Undiksha (Vol. 9, Number 1). <https://ejournal.undiksha.ac.id/index.php/JJPP>

²¹Arifin, F. (2025). *Rekonseptualisasi Diskresi Perspektif Hukum Administrasi Negara: Analisis Kritis Terhadap Implementasi Undang-Undang Administrasi Pemerintahan Nasional*. *Audi Et AP : Jurnal Penelitian Hukum*, 4(01), 25–37. <https://doi.org/10.24967/jaeap.v4i01.3867>

²²Jamilah, J., Listiani, M., Adhaini, D., & Syamsiah, S. (2025). *Negara Hukum dan Hak Asasi Manusia di Indonesia*. *AKSIOMA : Jurnal Sains Ekonomi Dan Edukasi*, 2(5), 898–912. <https://doi.org/10.62335/aksioma.v2i5.1198>

²³Utami et al., 2025.

have been explicitly recognize and guarantee human rights within their constitution. This constitutional recognition renders human rights as the supreme law binding on all branches of state power, including the executive branch in the making of public policy. Consequently, any public policy that is contrary to human rights may potentially be declared unconstitutional. The constitution therefore functions not merely as a political document, but also as an instrument for the protection of human rights that limits the scope of state power²⁴. In addition to the constitution, international human rights instruments also play an important role in shaping the normative standards of public policy. International treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights establish the obligation of states to respect, protect, and fulfill human rights. These obligations are not merely declaratory in nature but require concrete implementation through public policies. Within the context of a state governed by the rule of law, the ratification of international human rights instruments broadens the sources of normative legitimacy while simultaneously tightening the limits of state authority. A state's adherence to international human rights instruments also strengthens the principle of accountability in public policy. The state is accountable not only to its citizens, but also to the international community. International reporting and monitoring mechanisms encourage states to align their public policies with global human rights standards. In this regard, human rights function as a cross-border evaluative parameter that transcends short-term domestic political interests.

Nevertheless, in practice, the implementation of human rights as a normative limitation on state authority frequently encounters significant challenges. One of the main challenges is the tendency of the state to prioritize security and stability approaches in public policy, particularly during crisis period. In such conditions, human rights are frequently perceived as obstacles to policy effectiveness. This perspective reflects a fundamental misunderstanding of the concept of the *Rech Staat*, because it is precisely in times of crisis that the human rights protection becomes more important to preclude abuses of power. Moreover, the weak integration of human rights into the public policy-making process also constitutes a structural problem. Public policies are often formulated without adequate human rights impact assessments, resulting in the realization of potential human rights violations only after such policies have been implemented. This condition reflects the continuing dominance of administrative and technocratic approaches that separate public policy from human rights values. In fact, within a state governed by the rule of law, public policy should serve as the primary instrument for the realization of human rights, rather than becoming a source of violations.

In this regard, it is crucial to reaffirm that human rights are not abstract concepts detached from the public policy realities. Rather, human rights is a normative standard that must be internalized at every stage of policymaking, ranging from policy formulation and decision-making to implementation and evaluation. By making human rights normative limitations on state authority, public policies can function in a more just, inclusive, and sustainable manner.

Therefore, it can be concluded that human rights have a fundamental role as a normative limitation for state authority in making public policy. Human rights not only limit state authority in negative manner by preventing violations, but also in positive manner by leading public policy so it is compatible with principle of justice and human dignity. In democratic state, public policy legitimation is inseparable with respect for human rights. Therefore, strengthening human rights position as a normative parameter is a main precondition to realize legitimate public policy, justice based, and oriented to human protection as a main legal subject.

²⁴Dendi, G., Wahyudi, T., Gede, D., Mangku, S., Putu, N., & Yuliantini, R. (2019). *Perlindungan Hukum Tenaga Kerja Indonesia Ditinjau Dari Perspektif Hukum Internasional (Studi Kasus Penganiayaan Adelina Tkw Asal Ntt Di Malaysia)*. In *Tahun* (Vol. 2, Number 1).

Integration of Human Rights Principle in Formulation and Implementation of Public Policy.

In democratic *Recht Staat*, public policy is state main instrument to to govern social life and achieve the objective of the state. Nonetheless, public policy is not merely perceived as technocratic products or administrative which aims to achieve government efficiency and effectiveness. In contrast, public policy has strong normative dimensions since it immediately affects the fulfillment, restriction, or even violation of human rights. Consequently, integration of human rights principle in formulating dan implementation of public policy is a fundamental requirement for policy legitimation in a *Rech Staat*²⁵. *Rech Staat* positioned human rights as one of main foundation that limit as well as guidance for state authority. In context of public policy, human rights function not only as an evaluation standard after it executed, but also as a normative framework that must be internalized from the early stages of policy formulation. The integration of human rights principles substantively and procedurally throughout the entire public policy cycle affirms that state policies must not be value-neutral, but rather oriented toward the protection of human dignity, justice, and equality. Human rights-based approach in public policy develops as a reaction toward the shortcoming of development and policy approaches that are solely oriented toward output or economic growth.

This approach positions human rights as a framework for analysis, objectives, and an evaluative tool for public policy. Therefore, the accomplishment of a policy is measured not only by quantitative achievements, but also by the extent to which the policy respects, protects, and fulfills the rights of citizens. Within a human rights-based approach, the state is positioned as the *duty bearer* that bears legal and moral obligations to guarantee the rights of citizens as *rights holders*²⁶. This relationship affirms that public policy is not a form of charity, but rather an instrument for fulfilling state obligations. Therefore, the failure of public policy to comply with human rights standards is not merely a technical issue, but also a violation of the principles of the *Rech Staat*. The substantive integration of human rights principles means that human rights values must be reflected in the substance of public policy. Policies must be designed by considering their impact on fundamental rights, including civil and political rights as well as economic, social, and cultural rights. Principles such as non-discrimination, equality, participation, and accountability constitute essential elements in policy formulation. Meanwhile, procedural integration requires that the process of policy formulation and decision-making be conducted in a transparent, participatory, and accountable manner.

Stage of policy formulation is a crucial stage in public policy siklus since in this stage orientation, objective and policy design established. Human rights principle integration in this stage call for state to undertake early identification of the potential impacts of policies on the rights of citizens. Policy formulation without human rights analysis risks creates structural violations that are hard to reverse in implementation stage. One of the important instruments in formulation stage is Human Rights Impact Assessment (HRIA)²⁷. Through HRIA, policymakers can assess whether a proposed policy has the potential to restrict or threaten certain rights, as well as whether such restrictions can be justified legally and morally. It also encourages

²⁵Lismanto, L., & Utama, Y. J. (2020). Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial dalam Perspektif Negara Demokrasi. *Jurnal Pembangunan Hukum Indonesia*, 2(3), 416–433. <https://doi.org/10.14710/jphi.v2i3.416-433>

²⁶Sulaiman, H., Durin, R., & Purnama, D. (2025). HAK ATAS Mendapatkan Kehidupan Yang Berkeadilan: Analisis Falsafah Pancasila Sila Ke Lima. *Dame Journal of Law*, 1(1), 25–44. <https://doi.org/10.64344/djl.v1i1.5>

²⁷Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Penggunaan Media Sosial Secara Bijak Sebagai Penanggulangan Tindak Pidana Hate Speech Pada Mahasiswa Jurusan Hukum Dan Kewarganegaraan Fakultas Hukum Dan Ilmu Sosial Universitas Pendidikan Ganesha. *Jurnal Pengabdian Kepada Masyarakat Media Ganesha FHIS*, 1(1), 57-62.

states to consider alternative policy that is more compatible with human rights, thereby rights limitation can only determine as last resort. Moreover, the public participation principle constitutes a central element in the integration of human rights at the policy formulation stage. Within a human rights-based approach, citizens are not only objects of policy, but subjects who possess the right participation right in processes of decision making that affect their lives. Meaningful participation enables affected groups, including vulnerable and minority groups, to voice their interests and concerns. The absence of inclusive participation, public policies risk creates inequality and discrimination.

Implementation of policy is the stage where norms and policy decisions are implemented into concrete actions. In this stage, challenges against human rights integration oftentimes becomes increasingly evident. Policies that have been designed pursuant to human rights principles may lose their human rights orientation in their implementation due to inadequacy of institution capacity, repressive bureaucracy culture, and lack of supervision. Human rights-based approach in policy realization necessitates state officials to apprehend human rights as guidance work, not as an obstacle. State officials shall take notice of nondiscrimination principles, particularly in providing public service and law enforcement. Discrimination in policy implementation not only violated human rights but also jeopardized policy legitimation. Moreover, protection toward vulnerable groups is an important indicator of the successful of human rights integration in policy implementation. Neutral public policy may have disproportional impact toward certain groups, such as women, person with disability, and indigenous people. Therefore, implementation of policy must have sensitive nature to social context and society diversity, thereby avoiding structural unfairness.

Evaluation is the last stage in policy siklus that oftentimes overlook human rights perspective. Within human rights based approach, evaluation not only focus on effectiveness and efficiency of policy, but also the impact to human rights fulfilment. Human rights based evaluation enable state to make the necessary correction. State accountability constitute as main element in human rights integration in evaluation stage. State obliged to provide complaint and remedy mechanism for all citizen whose rights were violated by public policy. The absence of effective accountability mechanism will cause human rights integration into public policy merely as a symbolic not of substantive significance.

Although the integration of human rights into public policy has been normatively recognized, its implementation continues to face various challenges. One of the main challenges is conflict between public interest and individual rights. States, however, oftentimes use public interest as justification to limit human rights, without sufficient proportionality test. Under this condition, human rights frequently are positioned as secondary interests that may be set aside to maintain stability and security. Another challenge is insufficient accountability mechanism and supervision of public policy. Without judicial supervision and effective mechanism control, human rights integration in public policy will be hard to realize consistently. Moreover, poor understanding of state apparatus concerning human rights may constitute structural barrier in implementation of human rights approach.

Through the integration of human rights principles throughout the entire public policy cycle, it can be affirmed that the legitimacy of policy in a *Rech Staat* state is not determined merely by the formal procedures of its formulation. Policies formulated through legitimate procedure may lose legitimacy if it violated principle of justice, nondiscrimination, and human dignity protection. In this context, human rights function as a substantive parameter of public policy legitimation²⁸. Human rights-based legitimation demand state to consider public policy as a

²⁸Pratiwi, L. P. P. I., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Pengaturan Terhadap Kedudukan Anak Di Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *Jurnal Komunitas Yustisia*, 3(1), 13-24.

tool for human rights fulfillment, not just as a social control restraint. By establishing human rights as the principal normative framework, public policy may contribute to the enhancement of democracy, public trust and social sustainability. On contrary, policy that overlooks human rights may trigger social resistance, state delegitimization, and trust crisis to law.

Therefore, human rights integration in drafting of public policy is an essential precondition to realize democratic *Recht Staat*. Human rights base ensure that public policy not only formally legitimate, but also substantive just and dignity. Through consistent and comprehensive integration, human rights function as normative compass that lead public policy to human protection as the fundamental goal of law and state.

CONCLUSION

This research indicate that human rights as an essential normative parameter in assess public policy legitimation within *Recht Staat*. Public policy can not be comprehend merely as product of political will or instrument of state administration, but rather as legal action that affect directly to protection, limitation and fulfillment of citizen fundamental rights. This research finding affirm that public policy legitimation not only determine by formal and procedural aspect, but also their conformity with human rights principles, particularly legality principle, legitimate goal, real necessity, proportionality, non discrimination and protection of human dignity. Within this context, human rights function as normative limitation for state authority as well as substantive standar to examine rationality and justice of public policy.

Furthermore, this research concluded that human rights integration in all public policy siklus – from the formation, decision making, implementation to evaluation – is a precondition to realize legitimate policy in the *Recht Staat*. Inbalance between state authority extension and insufficient of human rights protection has the potential to reduce the legitimacy of public policy and weaken public trust in the law and state institutions. Therefore, this research recommends the strengthening of human rights based in public policy practice and importance for further research that study the concrete implementation of human rights principle within certain sectoral policy to develop a deeper understanding regarding effectiveness and challenge it practical implementation.

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