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PANCASILA-BASED RECONSTRUCTION OF LAW AND HUMAN RIGHTS IN LOCAL GOVERNMENTS' AFFAIRS AND AGENCIES

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ABSTRACT

Article 8 of Law Number 8 Year of 1999 concerning Human Rights states that the State must protect and demonstrate Human Rights. The State shall be committed to establishing protection and implementation of Human Rights as a discourse of necessity between the State, Constitution, and Citizens. It is mentioned under Article 28I Section 4 in the 1945 Constitution of the Republic of Indonesia. The law regarding the state's obligation was later implemented by establishing the Ministry of Law and Human Rights and regional-level regulations through the Minister of Law and Human Rights Regulation Number 34/2016 concerning the indicator standards of human rights at the regional/municipal levels. However, the regulation must still be improved to represent the Central Government and Local Government's commitment to designing regulations integrating Human Rights in civil, political, socio-economic, cultural, and developmental rights. This study uses legal constructivism as its approach. It aims to develop a legal system that implements principles of Law and human rights in social institutions, legal institutions, social regulators, social integration, and social engineering. The results highlight the reconstruction of Law Number 23 Year of 2014 regarding Local Government, which allows local Government to administer Government affairs with the Minister's or Governor's joint approval. Furthermore, the Law a quo currently urges revisions in Article 12 regarding the concurrent Government's affairs on Law and human rights. Therefore, a nomenclature of provincial and regency/municipal Law and Human Rights Office (Diskumham) is on demand to handle affairs concerning Law and human rights at regional levels, following Government Regulation Number 18 Year 2016 regarding Regional Agencies.

Keywords: *Reconstruction; law and human rights; state commitment; constitution*

INTRODUCTION

Since its independence, Indonesia has lawfully proclaimed itself a democratic legal country in Article 1 Section (2) and Article 1 Section (3) of the 1945 Constitution of the Republic of Indonesia. To fit the bill, the State shall protect, respect, and fulfill its citizens' human rights to manifest the aspired equal social Justice and welfare.

Historically, the concept of Human Rights originated from the condition in which a person or a group is not equally perceived as human beings. The person or the group is excluded,

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oppressed, and discriminated against as a 'second-level citizen.' Some of the prominent historical events of oppression can be traced back to the violent World War I and World War II, which raised global awareness of humanity and restored peace.[1] As the world progressed, the concept of human rights developed from an individual matter into collective rights applied in societal dynamics.

In this context, Amartya Sen, on the essence of liberty of rights[2] Refers to individual freedom as a fundamental principle. Amartya Sen states that "*the freedom of individuals is the basic building block. Attention is thus paid particularly to expanding the "capabilities" of a person to lead the kind of lives they value and have reason to value. These capabilities can be enhanced by public policy. Still, on the other side, public policy's direction can be influenced by the public's effective use of participatory capabilities".*

Extending from the statement above, there is a relationship between the State, human rights, and citizens.[3] Constitutional Law and Political Science's literature on constitutionalism usually consists of the anatomy of political power subjected to the Law, protection, and indemnity of human rights, free and independent judicature, and public accountability as the main framework of people's sovereignty. [4] Moreover, constitutional rights comprise a smaller scope that only applies to the positive Law of a state. International progression on human rights also encourages the national-level acknowledgment of human rights as constitutional rights.[5]

Human Rights are a set of rights inherent to all human beings as the creations of God. They shall be respected, upheld, and protected by the State, Law, government, and every person to preserve human dignity, standards, and values.[6] Furthermore, human rights inseparably belong to every human being.[7] The State shall indemnify those inherent rights. Human Rights in the Constitution are essential in balancing the State's power and citizens' fundamental rights.[8] One of the Constitution's primary functions is as the guardian of fundamental rights.[9] Constitutional rights differ from legal rights. Constitutional rights are established in the 1945 Constitution, while the laws and their subordinate legislation concoct legal rights.[10]

According to Jimly Asshidiqie, constitutional rights in the 1945 Constitution are categorized into civil, political, economic, social, cultural, unique, and development rights and the regulations of the State's responsibilities and obligations over human rights.[11] Those rights are mentioned in the 1945 Constitution. Some are only mentioned in law, but they possess constitutional importance equal to those in the 1945 Constitution.[12]

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[1]Hari Kurniawan dkk., *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*, ed. oleh Puguh Windrawan (Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII) Yogyakarta, 2015).

[2]Amartya Sen, *Development As Freedom* (New York: Oxford University Press, 1999).

[3]Sulistyowati, Wahyu Nugroho, dan Umar Ma'ruf, "The Problem of Legal Protection for Human Rights Activitists," *Sociological Jurisprudence Journal* 6, no. 1 (2023): 56–62, https://doi.org/10.22225/scj.6.1.2023.56-62.

[4]Dahlan Thaib, Jazim Hamidi, dan Ni'matul Huda, *Teori dan Hukum Konstitusi* (Jakarta: Rajawali Pers, 2017).

[5]I Dewa Gede Palguna, *Pengaduan Konstitusional: Upaya Hukum Terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara*, Cet 1 (Jakarta: Sinar Grafika, 2013).

[6]Leli Tibaka dan Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia," *Fiat Justicia Jurnal Ilmu Hukum* 11, no. 3 (2017): 266–88, http://jurnal.fh.unila.ac.id/index.php/fiat.

[7]Jimly Asshiddiqie, "Konstitusi dan Hak Asasi Manusia," dalam *Lecture Peringatan 10 Tahun KontraS* (Jakarta, 2008).

[8]Sri Soemantri M, *Bunga Rampai Hukum Tata Negara Indonesia*, Cet. 1 (Bandung: Alumni, 1992).

[9]Bagir Manan dan Susi Dwi Harijanti, "Konstitusi dan Hak Asasi Manusia," *Padjadjaran Jurnal Ilmu Hukum* 3, no. 3 (2016).

[10]Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid 2,* , ed. oleh Muchamad Ali Safa'at dan Muhammad Faiz, Cetakan Pertama (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006).

[11]Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar Demokrasi: Serpihan Pemikiran Hukum, Media dan HAM*, ed. oleh Zaenal A.M. Husein (Jakarta: Konstitusi Press, 2005).

[12]Mukmin Muhammad, "HAK ASASI MANUSIA DALAM HUKUM POSITIF DENGAN KONSEP CONSTITUTIONAL IMPORTANCE," *Meraja Journal* 1, no. 2 (Juni 2018).

The National Commission of Human Rights (Komnas HAM) claims that Indonesia's progression in human rights is favorable for enhancing the field's legal framework. The endeavor implies the prospects in Human Rights protection concerning how far the framework's progress has come in its implementation and the measurement scale of the implementation. For this reason, the State's commitment to implementing protection, respect, and fulfillment of Human Rights is a discourse of necessity between the State, Constitution, and Citizens. The relation between those three is highlighted in Article 28I Section 4 of the 1945 Constitution that states the State's obligations on Human Rights, namely: (i) To protect, develop, enforce, and fulfill human rights are the State's responsibilities; and (ii) To enforce and protect human rights by the principles of a democratic legal country, the implementation of human rights is established and regulated through legislations.

Human rights and state obligations are issued in Law (UU) Number 39 Year 1999 regarding Human Rights. Article 8 of the Law states, *"The principal responsibility for protecting, promoting, upholding, and fulfilling human rights lies with the Government*." This fortifies the concepts and conditions the international Human Rights law requires, which declares that the State is responsible for implementing Human Rights. As a part of the international pledge, a state is liable for the conditions in the agreement. Therefore, the Government is the duty bearer between Law, Human Rights, and the Constitution. [13] The State or Government has three obligations: to respect, protect, and fulfill. [14] The obligation to respect refers to the State's obligation to restrain from doing intervention, except if it is legitimate.

The State or Governments are liable to these responsibilities as follows:

[13]Waode Mustika, Nova Septiani Tomayahu, dan Mellisa Towadi, "The State's Responsibility in Fulfilling Human Rights during the COVID-19 Pandemic," dalam *Proceedings of the 2nd International Conference on Law and Human Rights 2021 (ICLHR 2021)* (Advances in Social Science, Education and Humanities Research, 2021), 113–20, https://doi.org/10.2991/assehr.k.211112.014.

[14]David Jason Karp, "What is the Responsibility to Respect Human Rights? Reconsidering the 'Respect, Protect and Fulfil' Framework," International Theory 12, no. 1 (1 Maret 2020): 83–108, https://doi.org/10.1017/S1752971919000198.

TABLE 1. The Dimension of Human Rights

I **RESPECT** ***(no interfering in the implementation of the rights)***	II **PROTECTION** ***(preventing violation by the third party)***	III **FULFILLMENT** ***(providing resources and policy results)***
a. We are providing laws to protect citizens from torture, extrajudicial killing, abduction, injustice, intimidation during general elections, and revocation of suffrage. b. It enforces laws that protect people from discrimination based on ethnicity, race, gender, or language in healthcare, education, or other welfare matters and allocates inadequate resources. c. Empirical practice. The right to live relates to the State's obligation not to kill. d. Rights of physical and mental integration, which relate to the State's obligation not to torture.	a. The Government shall provide legal actions to prevent violations by non-state actors, such as torture, extrajudicial killing, exile, abduction, and intimidation during general elections. b. The Government shall provide legal acts to prevent non-state actors from discriminating and oppressing others in access to healthcare, education, and other welfare matters. c. The State/Government shall provide a safe system for disabled people to prevent human rights violations. If a disabled person suffers a violation, the State/Government must arrest and prosecute the perpetrator. Sparing the guilty to free from any judicial mechanism equals violating the victim's rights of safety and security.	a. The government shall invest in legal matters, penal institutions, police forces, general elections, and resource allocation that benefits people. b. The Government shall commit progressively by investing in healthcare, education, and other welfare matters and allocating the resources for the people's benefit. c. Empirical practice. Every disabled person arrested for criminal allegations has to be accompanied by a lawyer, doctor, psychologist/ psychiatrist, and an expert required for the disability. Any unnecessary delay in the disposition of the rights may lead to the unfulfillment of the rights of people with disabilities.

Source: *Australia Indonesia Partnership for Justice* (AIPJ) and PUSHAM UII

According to the table above, not fulfilling the State's three primary responsibilities will result in human rights violations. In this case, the State refers to the Executive, Legislative, and Judicial governmental branches. The State's unwillingness and/or inability to protect and fulfill human rights equals violations by omission.[15] Furthermore, the State's shortfall in respecting Human Rights is defined as a human rights violation by the commission.

To pursue the Government's responsibilities in implementing Human Rights as stated before, the Government finally established standards of Human Rights fulfillment on the regency/municipal level through the Minister of Law and Human Rights Regulation Number

[15]Marcela Barón Soto dan Alejandro Gómez Velásquez, "An approach to the state responsibility by an omission in the American Court of Human Rights Jurisprudence," *Revista CES Derecho* 6, no. 1 (Juni, 2015): 3–17.

34 Year 2016 regarding the indicator standards of Human Rights in the Regency/Municipal levels. The criteria include fulfilling healthcare rights, education, maternity and children, civil, work, housing rights, and environmental sustainability. However, this regulation only extends to the local Government and does not involve the House of Representatives (DPRD), either the provincial or regency/municipal. The regulation has yet to be extended to the central government, provincial government, regional/municipal government, and village government. Since the international Law of human rights demands respect, protection, and fulfillment in its implementation, Indonesia's awareness of Human Rights is still not integrated with Pancasila values and citizens' Constitutional Rights by the 1945 Constitution. Considering the lack of the State's responsibility in optimizing the protection, fulfillment, and respect of Human Rights at the regional level, the local Government still needs to improve in administering Human Rights and its laws as an organization.

Establishing the regulation aims to improve the Regency/Municipal-level government's awareness of Human Rights to implement the obligations and responsibilities regarding respect, fulfillment, protection, enforcement, and advancement of human rights. However, the framework still needs to be more representative of the Government and/or local Government's values that integrate human rights in civil and political matters; social, economic, and cultural rights; and development rights. Planning and identifying the reconstructed concept and indicators of the State's constitutional responsibilities holistically and comprehensively is necessary to manage the affairs and agencies of both provincial and regional/municipal governments. The local Government's awareness of Human Rights is contrived to improve the Government's roles and responsibilities in respecting, protecting, fulfilling, enforcing, and developing human rights.

This study focused on the law and human rights and their relevance in administrating the affairs and agencies of the local governments, such as the provincial and regional/municipal ones, to reconstruct the law. The Law revolves around implementing the State's principles of Law and Human Rights, which would resolve the ineffective regional policy on Human Rights in its practice.

METHOD

This study used socio-legal law research methodology and legal constructivism for its approach. This approach systematically reviews and analyses the philosophical perspective of Law by adjusting the existing paradigm.[16] The study occurred in three areas: the Government of Malang Regency, the Government of Batu City, and the Government of Malang City. The population consisted of the apparatus of the local government both on the provincial and regional/municipal levels, the stakeholders, and/or law and human rights activists who actively participated in supervising the advocacy concerning law and human rights. Moreover, the samples comprised the Government's legal service, the Ministry of Law and Human Rights regional office, and the Legal Aid Institute (LBH) in Malang City, Batu City, and Malang Regency. The primary data were resourced through in-depth interviews with the determined population and samples. The secondary data were collected through the inventory of legislations and literature study. Next, the data were analyzed using the content analysis technique to map each actor's perceptions with the pre-determined regulations so that every person could fully

[16]Unggul Basoeky, "Legal Reconstruction: Ingsutan Paradigmatic on the Determination of the Positivism Paradigm and Legal Positivism in Law Enforcement in Indonesia," *International Journal of Science and Society* 1, no. 4 (24 December 2019): 154–75, https://doi.org/https://doi.org/10.54783/ijsoc.v1i4.323.

comprehend the problems and social reality in planning the regulations regarding regional affairs and agencies.

ANALSIS & DISCUSSION

State's Obligations and Responsibilities to Respect, Protect, and Fulfil Human Rights

Plato claimed that good order best governs a state (Law). Plato's view regarding the State of Law was to prevent tyranny and protect civilians' rights from unfair Government. Meanwhile, Aristoteles stated that a constitution and legal sovereignty govern an excellent state. State Law will always be associated with the state constitution, particularly regarding the administration and enforcement of the State's power scope and caveats to ensure the civilians' freedom and rights. Therefore, a constitution is *a condition sine qua non* (indispensable) for a state.[17]

A state of Law is known for its Constitution as the primary principle for statehood, Government, and society. Due to that, Law is not subject to sectarian and primordial politics but to the State's aspirations. According to F. R. Bohtlingk, a state of law is a state where law and policy are bound by freedom.[18] [19] Bohtlingk further mentioned that judges and the government are pledged to the legislations and limits of authority by the lawmakers to achieve power restraint.

The Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia states, "*After that, to form a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to educate the life of the nation, and to participate in the execution of world order which is by freedom, perpetual peace, and Social Justice. Therefore, the National Independence of Indonesia shall be composed of a Constitution of the State of Indonesia, which is structured in the form of the State of the Republic of Indonesia, with people's sovereignty based on the belief in One and Only God, just and civilized Humanity, the Unity of Indonesia and a Democratic Life guided by wisdom in Deliberation/Representation, and by realizing social Justice for all the people of Indonesia."*

Pancasila as the nation's foundational theory and the first and second paragraphs of the Preamble of the 1945 Constitution regarding independence as *'the right of all nations*' that *'guide the people of Indonesia safely and soundly*' indicate that Indonesia is a democratic state that upholds law supremacy and human rights. The amendment of the 1945 Constitution pinpointed that Indonesia has become more aware and concerned about the values of human rights than before. The second amendment of the 1945 Constitution resulted in a new chapter regarding human rights: Chapter XA. The chapter was established according to the Resolutions of People's Consultative Assembly (TAP-MPR) Number XVII/MPR/1998. The TAP-MPR later adopted Law Number 39, 1999, regarding human rights, and Law Number 26, 2000, regarding the jurisdiction of human rights. Both laws were initiated after considerations of

[17]Jelena Trajkovska-Hristovska, "THE CONSTITUTION AND THE CONSTITUTIONALISM IS THE CONSTITUTION CONDITION SINE QUA NON FOR THE CONSTITUTIONALISM," *PEOPLE: International Journal of Social Sciences* 4, no. 2 (31 Oktober 2018): 1423–33, https://doi.org/10.20319/pijss.2018.42.14231433.

[18]Nurul Qamar, *HAK ASASI MANUSIA Dalam Negara Hukum Demokrasi (Human Rights In Democratiche Rechtsstaat)* (Jakarta: Sinar Grafika, 2013).

[19]Ridwan HR, *Hukum Administrasi Negara*, Edisi revisi (Jakarta: Rajagrafindo Persada, 2018).

necessity, relevance, and manifestation of the Preamble of the 1945 Constitute, Articles in the 1945 Constitute, and TAP-MPR Number XVII/1998. Moreover, there was also Law Number 27, the Year 2004, regarding the Truth Commission and laws regarding the ratification of some international conventions, such as Law Number 11, the Year 2005 (legalization of International Covenant on Economic, Social, and Cultural Rights 1966) and Law Number 12 the Year 2005 (legalization of International Covenant on Civil and Political Rights 1966).

Human Rights are rights ingrained in every human being and existence as God's creation. They shall be respected, upheld, and protected by the State, Law, government, and every person to preserve human dignity, standards, and values. The inherent human rights are universal because they belong to everyone regardless of race, gender, ethnicity, culture, religion, and other background differences.[20]

In a state constitution, human rights are essential in balancing the State's power and protecting people's rights. Laws regarding Human Rights include Article 28A until Article 28J of the 1945 Constitution, which was arranged based on the TAP-MPR Number XVII/MPR/1998 regarding Human Rights. To further understand the concepts of Human Rights, the 1945 Constitute, TAP-MPR Number XVII/MPR/1998, and Law Number 39 Year 1999 regarding Human Rights exist as one continuum.

Incorporating human rights in the Constitution emphasizes human rights not only as fundamental rights but also as supreme constitutional rights.[21] This leads to three essential state obligations: respect, protect, and fulfill the rights. However, the constitutional protection of human rights only applies if every person eligible and liable by the legislation is bound to Human Rights.

The State's commitment to protecting, respecting, and fulfilling Human Rights is a discourse of necessity between the State, Constitution, and Citizens. According to Article 28I Section (4) of the 1945 Constitution, "*the protection, advancement, enforcement, and fulfillment of human rights shall be the state's responsibility, particularly the government.*" This article accentuates the State's responsibilities for Human Rights.

Responsibility can be defined as being accountable and willing to blame, appeal, and make legal proceedings. It can also mean being liable for the other party's actions. The State's accountability can be categorized into two types, namely responsibility and liability. [22] However, responsibility refers to duty or implies social standards required by a particular law system, while liability is a consequence of omission in carrying out an obligation or accomplishing the required standards.

A state is responsible for protecting, respecting, and fulfilling Human Rights. When a state has ratified the international Law of Human Rights instruments, it has legally committed itself to the obligations of protection, respect, and fulfillment of Human Rights. The State is legally responsible for protecting its people from any crime conducted by other parties in their area. United Nations (UN) recommends fulfilling the obligations through acts of prevention, investigation, and prosecution of violations through judicial proceedings. Therefore, a system of Law arranged by each State is necessary to bridge and align the international Law of Human Rights. Three types of state obligations and responsibilities in the framework of Human Rights are as follows:

a. Protection

[20]Zahara Nampewo, Jennifer Heaven Mike, dan Jonathan Wolff, "Respecting, protecting and fulfilling the human right to health," *International Journal for Equity in Health* 21, no. 1 (1 December 2022), https://doi.org/10.1186/s12939-022-01634-3.

[21]Bisariyadi, "Referencing International Human Rights Law in Indonesian Constitutional Adjudication," *Constitutional Review* 4, no. 2 (December 2018): 249–70, https://doi.org/10.31078/consrev424.

[22]Kirsten Schmalenbach, "States Responsibility and Liability for Transboundary Environmental Harm," dalam *Corporate Liability for Transboundary Environmental Harm* (Springer et al., 2023), 43–84, https://doi.org/10.1007/978-3-031-13264-3_3.

A state is responsible for protecting its people who reside in and outside the jurisdiction. A state shall actively take action to prevent human rights violations by a third party.

b. Respect

A state shall respect human rights by not intervening in its people and their rights. A state is restricted from any actions that inhibit fulfilling rights. There are two types of state obligations in respecting human rights, namely immediate obligations and progressive obligations. Immediate obligations are often implemented through judicial proceedings, while progressive obligations are optional if the resources are inadequate.

c. Fulfillment

A state is responsible for pursuing legislative, administrative, and legal actions to accomplish its people's human rights entirely. If a state is unwilling to fulfill its responsibilities and obligations, it is a human rights violation. The international party shall handle the violation if the State refuses to take accountability for it. The State's role in indemnifying and fulfilling human rights remains the same. Every right shall be indemnified and fulfilled regardless of the type. Depending on the context, a state can be active (with intervention) and passive (with non-intervention). The fulfillment of human rights heavily relies on the Government's political commitment and will. Moreover, it also relies on the political system of the State. In liberal countries, a state is often disinclined to regulate its policies and intervene in economic affairs.

Each obligation and responsibility to respect, protect, and fulfill consists of the obligation to conduct and result. The obligation to conduct means that the State shall accomplish specific steps to fulfill a right, while the obligation to result compels the State to achieve specific targets and fulfill the substantive standards.[23] As the responsible party, the State has to accomplish its duties simultaneously and immediately. The State is considered culpable of a human rights violation if it fails.

The Urgency to Reconstruct Law Number 23 Year 2014 regarding Regional Administration

Every state has its system of government and form of government according to its needs and wants. Indonesia's system of Government is presidential and unitary and takes a republic as its form of Government. According to the history of Indonesia's Constitution before the amendment of the 1945 Constitution, Indonesia used to be a centralized unitary country in which the central government handled government affairs. This allowed local governments no authority in their affairs until the system became decentralized after the amendments during the Reformation era. The local governments were then allowed to manage their affairs and resources for their benefit.

The 1945 Constitute elaborates that a system of regional autonomy exists within the Republic of Indonesia. The amendment of the 1945 Constitute opened local governments up to the opportunities of managing their respective governmental affairs. Regional autonomy in Indonesia is stated in Article 18 Section (1) of the 1945 Constitute: *"The Unitary State of the Republic of Indonesia is divided into provincial regions and those provincial regions are divided into regencies (kabupaten) and municipalities (kota), whereby every one of those provinces, regencies, and municipalities has its local government, which laws shall regulate."*

According to Bagir Manan, the amended Article 18 of the 1945 Constitute aligns better with the idea of local governments as an independent system in a democratic state. Moreover, Bagir Manan stated that deconcentration is a means of instrumentalization; therefore, it is not fit for

[23]Benoit Mayer, "Obligations of Conduct in the International Law on Climate Change: A Defence," *Review of European, Comparative & International Environmental Law* 27, no. 2 (9 Mei 2018): 130–40, https://doi.org/https://doi.org/10.1111/reel.12237.

a government system that antithetically opposes centralization.[24] In the local Government, the regional autonomy shall be positioned horizontally below the central Government.

Local Government has rapidly evolved amidst the demand for participatory democracy that actively involves people in the local government system. To accomplish the Government's targets for people's welfare, the affairs are elaborated in Law Number 23 Year 2014 regarding Local Government. The grant of regional autonomy aims to accelerate people's welfare by improving public services, empowerment, and participation and increasing the Region's values and potentials in line with the principles of democracy, equality, and local specialty.

Implementing decentralization grants the broadest autonomy to provincial and regional/ municipal regions. According to Solichin Abdul Wahab, regional autonomy provides a broad public space to attract people's participation in the system. The participation should not be passive and controlled by the upper power, or it would be mobilization. In active participation, people should understand their needs and get involved in choosing and formulating the system and working on accomplishing the targets.[25]

Fundamentally, human rights should be fully protected regardless of any factor. Law and human rights protection and advancement are fundamentals in a fair and inclusive society, system framework, and local government standards. Local Government is expected to improve the Region's potential and values by utilizing the principles of democracy, equality, and Justice. In this context, the local Government is granted the broadest autonomy.

The fulfillment of human rights should be accomplished by more than just the central and local governments, for the decentralization of matters is considered more effective. As it is known, public perception regarding Human Rights is sometimes limited to political and civil rights, although economic and socio-cultural rights are also equally important.

Decentralization allows the delegating of authority and responsibilities from the central government to the regional (provincial or regency/municipal) governments. Article 1 Section 5 of Law Number 23 the Year 2014 regarding Regional Administration states, *"Regional autonomy means the right, authority, and obligation of an autonomous region to govern and manage state affairs and interest of the local people on its own by the existing law*." However, autonomy does not suggest the liberation of a region or the absolute freedom of a region. Autonomy suggests an optimization of local environmental and cultural potentials and values. Furthermore, optimization is not a form of exploitation. Optimization is a process of developing the region and improving social welfare.

In its practice, regional autonomy is implemented by decentralizing central government authorities. The authorities used to be delegated from the regional level to the central Government, but the decentralization from the central Government to the local Government has turned the tables around ideally.

Autonomy and decentralization are considered essential to establish and guarantee national integration. The previous centralized system caused inequality between the central Government and regions. A regional autonomy policy was established immediately to prevent injustice among regions. As mentioned, the local Government also needs juridical instruments to implement and administer autonomy.

The issue of Law Number 32 Year 2014 regarding Regional Administration has brought significant differences among the Regional Agencies. The regional agencies should be formed by rightsizing and delegating the appropriate workload to accommodate each Region's factual conditions. This aligns with the appropriate, proportional, effective, and efficient guidelines

[24]Bagir Manan, *Menyongsong Fajar Otonomi Daerah*, ed. oleh Ni'matul Huda dan Budi Agus Riswandi, Cet.4 (Yogyakarta: Pusat Studi Hukum Fakultas Hukum UII, 2005).

[25]Solichin Abdul Wahab, *Masa Depan Otonomi Daerah: Kajian Sosial, Ekonomi, dan Politik untuk Menciptakan Sinergi dalam Pembangunan Daerah.* (Surabaya: SIC, 2002).

of regional agencies' organization arrangement. Forming and arranging the agencies are intended to (a) support the Head of the Region and DPRD in administering the Region, (b) arrange the policy function through coordinating the work progress from the planning, performing, monitoring, evaluating, and reporting, and reviewing the administrative service, (c) accomplishing the good governance and sound regional agency system to accelerate people welfare through public service, empowerment, participation, and regional potentials.

Authorities and responsibilities of the local Government are also correlated with the state's responsibilities in respecting, protecting, and fulfilling human rights. Therefore, a state representative must be concerned about the Law and human rights in the local government system. It is almost indisputable that the local Government has contributed dramatically in cases of law and human rights violations, especially concerning people in the respective Region. However, Article 12 of Law Number 23 Year 2014 regarding government affairs has yet to address the concern of law and human rights.

In the context of human rights, the State shall be responsible for fulfilling, protecting, and respecting human rights at the regional level. Unfortunately, the current Constitution is still limited to the local Government's awareness of human rights, as stated in Minister of Law and Human Rights Regulation (Permenkumham) Number 34 Year 2016. The regulation must tackle the holistic and comprehensive elaboration of the state responsibilities for Human Rights and its arrangement at the regional level of Province and Regency/Municipality, considering the constitutional responsibility shall eminently align with Pancasila values and the national objectives in the 1945 Constitution.

Matters regarding regional administration are presented in the 1945 Constitution as follows:

TABLE 2. Regional Administration, as stated in the 1945 Constitution

Article 18 Section (1)	The Unitary State of the Republic of Indonesia is divided into provincial regions, and those provincial regions are divided into regencies (kabupaten) and municipalities (kota), whereby every one of those provinces, regencies, and municipalities has its own regional Government, which laws shall regulate.
Article 18 Section (2)	The regional governments of the province, the regency, and the municipality shall regulate and manage their government affairs according to the principles of autonomy and duty of assistance.
Article 18 Section (5)	The regional governments exercise the most comprehensive autonomy, save for government affairs determined by Law as the affairs of the Central Government.
Article 18 Section (6)	The regional governments are entitled to determine regional regulations and other regulations for executing the autonomy and the duty of assistance.

Mandatory local government affairs, according to Law Number 23 Year 2014, are as follows:

TABLE 3. Mandatory Government Affairs regarding Law Number 23 Year 2014

Mandatory Government Affairs relating to Basic Services	**Mandatory Government Affairs not related to the Basic Services**	**Optional Government Affairs**
a. education; b. health; c. public works and spatial planning; d. housing and residential areas; e. peace, public order, and the protection of society; and f. social	a. workforce; b. empowerment of women and protection of children; c. food; d. land; e. environment; f. population administration and civil registration; g. community empowerment and village; h. population control and family planning; i. transportation; j. communication and informatics; k. cooperatives, small businesses, and medium; l. capital investment; m. youth and sports; n. statistics; o. cryptography; p. culture; q. library, and r. archival	a. marine and fisheries; b. tourism; c. agriculture; d. forestry; e. energy and mineral resources; f. trade; g. industrial, and; h. transmigration

The affairs are divided based on accountability, efficiency, externality, and national strategy. Article 12 of Law Number 23 Of 2014 has not incorporated law and human rights in government affairs.

TABLE 4 Law Number 23 the Year 2014 regarding Local Government

Article 17 Section (1)	The Region's right to set policy for the area is organized under the authority of Local Government Affairs.
Article 209 Section (1)	The province consists of: a. local (provincial) secretariat; b. parliament (DPRD) secretariat; c. inspectorate; d. offices, and e. guild

Article 209 Section (2)	Regency/Municipality consists of: a. local (regency/municipal) secretariat; b. parliament (DPRD) secretariat; c. inspectorate; d. offices; e. guild, and; subdistrict
Article 212 Section (1)	The Regional Regulation shall determine the establishment and composition of the Region, as referred to in Article 209 paragraph (1) and paragraph (2).
Article 217 Section (1)	The Agency referred to in Article 209 section (1) letter d and section (2) d is formed to carry out the authority of Local Government Affairs.
Article 217 Section (3)	Determination of the workload as referred to in paragraph (2) based on the population, land area, authority of Local Government Affairs as Mandatory Government Affairs, financial ability, potential, employment projections, and land use for the Optional Government Affairs.

The analysis above demonstrates that the local Government is entitled to issue policies on its affairs that the Minister will validate for the provincial Government and by the Governor for the regency/municipal government. This approval is based on the Mandatory Government Affairs unrelated to Basic Services and Government Affairs in Article 12 that has yet to discuss matters of Law and human rights.

Although this reconstruction is already incorporated in the agenda of Raising Awareness of Human Rights in Regency/Municipality, actual local organizations or guilds concerning the matter are yet to be found. This hinders optimizing human rights fulfillment and protection at the regional level. It also implies the inequality of authority between the central government and local government regarding the fulfillment and protection of law and human rights. To prevent that and reinforce Law and human rights at the regional level, a local organization or guild of Law and human rights is highly necessary to compose programs and policies oriented to developing local potentials and welfare, implementing principles of Law and human rights, and handling problems in composing the human rights local policy.

Hence, Law Number 23 Year 2014 regarding Local Government, particularly Article 12 of Government Affairs, should be reconstructed. The reconstruction suggests a new scope for Law and human rights and expectantly results in a legal framework. The framework should be utilized to arrange for local government agencies to achieve good governance and implement the commitment to human rights protection, respect, and fulfillment at the regional level.

Reconstruction Model of Law and Human Rights Organization at the Regional Level

The constitutional design of Law and human rights in local affairs and agency arrangement is integral to the constitutional framework between the Central and Local governments. This framework consists of the 1945 Constitution and the Law and human rights principles reflected in legislation regarding regional autonomy. Constitutional design that reflects the Law and human rights principles are as follows:

a. Highest Level (Center)

At the highest level are Pancasila and the 1945 Constitution of the Republic of Indonesia. These two play a fundamental part in the matters of Law and human rights in Indonesia. Human

Rights are fundamental rights inherent in every human being as God's creation. Pancasila is Indonesia's fundamental philosophy that has also become the foundation of the State.

The 1945 Constitution is the highest Constitution that incorporates fundamental principles of a state, including Law and human rights. The phrase Human Rights can be found in the first paragraph of the Preamble of the 1945 Constitution and starting from Article 27 to Article 31. According to the 1945 Constitution, human rights are divided into five categories:

1) Freedom of speech;
2) Freedom of religion;
3) Right of equality before the Law;
4) Right of living;
5) Right of education.

Pancasila and the 1945 Constitution are Indonesia's primary legal documents to compose the Law and human rights framework. Pancasila suggests the fundamental values and principles, while the 1945 Constitution represents the legal foundation that arranges the rights and responsibilities of people, State, and government authorities regarding human rights.

b. National Level

The national level consists of Law Number 39, 1999, regarding Human Rights; Law Number 11, 2005, regarding the International Covenant on Economic, Social, and Cultural Rights; and Law Number 12, 2005, regarding the International Covenant on Civil and Political Rights. These legislations discuss the legality and protection of Human Rights.

1) Law Number 39 Year 1999 regarding Human Rights depicts the legal foundation of human rights acknowledgment and protection based on international standards and reflects civil, political, economic, social, and cultural rights.
2) Law Number 11 Year 2005 regarding International Covenant on Economic, Social, and Cultural Rights This Law vouches for economic, social, and cultural rights such as work, health, education, housing, and culture. This law encourages the government to take action to protect and advance those rights.
3) Law Number 12 Year 2005 regarding International Covenant on Civil and Political Rights. This Law guarantees civil and political rights such as freedom of speech, freedom of religion, equality before the Law, and other political matters. This Law establishes the Government's responsibility to protect those rights and ensures accessible law enforcement for people.

These three legislations set a solid legal foundation for human rights protection and implementation in Indonesia. They reflect Indonesia's commitment to fulfilling international human rights obligations and composing a framework for Indonesians and their rights.

c. Regional Level

Law Number 23, the Year 2014, regarding Local Government and Government Regulation Number 18, the Year 2016, regarding Regional Agencies, significantly influence Law and human rights at the level of Local Government. Below are the correlations between these two laws and the principles of Law and human rights:

1) Legal Aspect in Law Number 23, the Year 2014, regarding Local Government and Government Regulation Number 18, the Year 2016, regarding the Regional Agencies
   a) The legal principle regarding local government in Law Number 23 Year 2014 emphasizes the legality of local government, which means that every action shall be based on law. This results in a legal foundation in every Local Government activity.

b) Human rights protection in Law Number 23 Year 2014 regarding Local Government lists the principles of human rights protection in local Government. This includes protection of civil, political, economic, social, and cultural rights.
c) Judicial proceedings in Government Regulation Number 18, the Year 2016, regarding the Regional Agencies administering the verdict process of Local Government and the implementation. It results in a legal framework for the verdict process and the implementation at the regional level.

2) Human rights aspect in Law Number 23 the Year 2014, regarding Local Government and Government Regulation Number 18, the Year 2016, regarding the Regional Agencies
a) Human rights protection, Law Number 23, the Year 2014 regarding Local Government explicitly states aspects of human rights protection in local Government. This includes freedom of speech, freedom of religion, right to Justice, rights of health, and other socio-economic rights.
b) Public Participation, Law Number 23 Year 2014 regarding Local Government encourages people to actively participate in local Government's decision-making. This aims to create a space for people to engage in human rights protection and advancement at the regional level.
c) Transparency and Accountability, Government Regulation Number 18 Year 2016 regarding the Regional Agencies regulates the principles of transparency and accountability in the Region's financial management and government activities. This helps ensure that the usage of public resources is fair and relevant to human rights matters.

To run the local government system and improve work performance and welfare, Law Number 23 Year 2014 regarding Local Government was established to accelerate people's welfare by improving public services, empowerment, participation, and region potentials in line with democracy, equality, Justice, and local specialty.

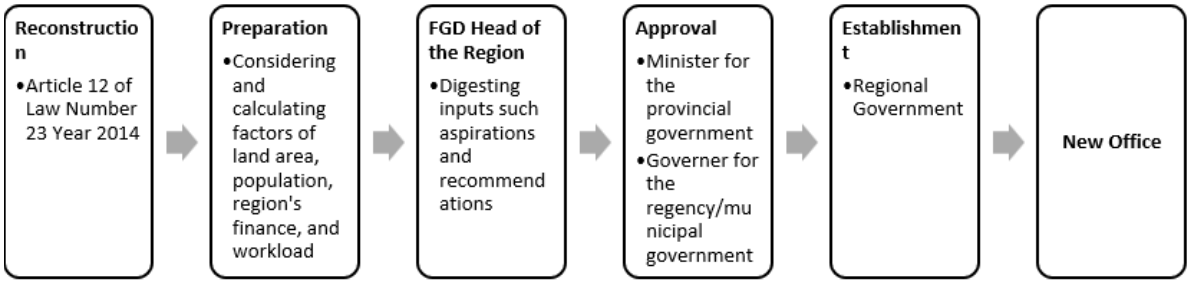
. The Regional Agencies are categorized into five groups based on the concept of organization formation, namely the Head of the Region (strategic apex), regional secretary (middle line), regional offices (operating core), guild/support (technostructure), and supporting staff. Regional offices, or the operating core, carry out duties as an assistant to the Head of the Region in administering both mandatory and optional Government Affairs.

. Regional Agencies at the provincial level consist of (a) regional secretariat, (b) DPRD secretariat, (c) inspectorate, (d) offices, and (e) guild. Regional Agencies at the regency/municipal level consist of (a) regional secretariat, (b) DPRD secretariat, (c) inspectorate, (d) offices, and (e) guild, and (f) subdistrict. The structure of the agencies is established after approved by the Minister for the provincial Government and by the Governor for the regency/municipal government. This approval is based on the Mandatory Government Affairs, unrelated to Basic Services and Government Affairs.

This study found that legal bureaus in regions of province and regency/municipality are merely coordinated and administrative regarding the reports on human rights. This does not align with the State's commitment to human rights of protection, respect, and fulfillment as commanded in the 1945 Constitution. Therefore, an additional nomenclature of regional agencies is needed in the implementation. The nomenclature should be the Law and Human Rights Office (Diskumham) for both regions of the province and regency/municipality. The office shall conduct and supervise any activity regarding Law and human rights in the Region with Government Regulation Number 18 Year 2016 regarding the Regional Agencies as the basis. Establishing Regional Diskumham is expected to close the gap between the State's responsibilities in fulfilling, protecting, and respecting human rights at the regional level.

In general, below are the steps for redesigning and establishing the Regional Law and Human Rights Office (Diskumham):

Image 1. Steps of the Establishment of Regional Law and Human Rights Office (Diskumham)



CONCLUSION

Closing

The urge to reconstruct Law Number 23 Year 2014 regarding Local Government emerges from the gap in the concurrent Article 12 regarding Law and Human Rights as a part of Local Government Affairs. This is supported by the situation in which the local Government is entitled to establish policy for local government affairs with the approval of the Minister for the provincial Government and by the Governor for the regency/municipal government based on the Mandatory Government Affairs unrelated to Basic Services and Government Affairs. The reconstruction expectantly results in a more extensive scope on Law and human rights as a part of the regional authorities and legal framework in the management. The framework is later utilized to administer regional agencies to create good governance and establish the state commitment concerning human rights protection, respect, and fulfillment as regional responsibility.

The suggested reconstruction involves the addition of the nomenclature of regional agencies in the form of the Law and Human Rights Office (Diskumham) for both regions of the province and regency/municipality. The formation of regional Diskumham would be guided and regulated by Government Regulation Number 18 Year 2016 regarding Regional Agencies. This office hopes to close the gap in state responsibility concerning human rights fulfillment, protection, and respect at the regional level.

Recommendation

The reconstruction model in this study is an aspiration and feedback for the House of Representatives (DPR) as a legislative at the central government level to revise the Law regarding Local Government, particularly Article 12 pertinent to Law and human rights, and accommodate the Local Government's awareness of Law and human rights. For the Governor and Regent (Bupati) or Mayor, implementing Law and human rights principles is highly advised to create good governance in the future.

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