

# Civil and Political Rights: Foundation, Development and Challenges in Indonesia

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## ABSTRACT

Civil and political rights are central issues, so their development continues to receive attention both at the national and international levels, this can be seen in several human rights documents, both international documents such as international human rights covenants and national human rights documents. The problem is what is the foundation, development and challenges of human rights, especially civil and political rights. Answering human rights issues is done analytically using a normative research model with a statutory approach and a conceptual approach. The research results explain that in principle every democratic country contains guarantees for human rights including civil and political rights in its constitution. However, everything really depends on political will to provide space for the existence, protection and fulfillment of these civil and political rights. At this level, efforts are needed to prevent acts of oppression or restrictions on the civil and political rights of every citizen in that country. The struggle to enforce civil and political rights began long before these rights were guaranteed in the International Covenant, which was then guaranteed and regulated in more detail in several international covenants and further regulated in the constitutions of countries, including constitutional guarantees in the 1945 Constitution.

**Keywords:** Civil and Political Rights; International Covenant; Constitution; Law and Legislation.

## INTRODUCTION

The history of struggle, protection, respect and fulfillment of Human Rights reached its peak on December 10, 1948, when the United Nations General Assembly issued the Universal Declaration of Human Rights (Gurinda, 2019). The UDHR contains the basic principles of human rights and basic freedoms, including the ideal of humans being free to have and enjoy civil and political freedoms. This can be achieved one way by creating conditions where everyone can enjoy civil and political rights regulated based on international provisions. After going through a long debate, at its session in 1951, the UN General Assembly asked the UN Human Rights Commission to draft two covenants on human rights, namely: (1) the Covenant on civil and political rights, and (2) the Covenant on economic, social and cultural rights. The UN General Assembly also specifically stated that the two Covenants must contain an article which will stipulate that all people in a country have the right to self-determination (Nasution & Zen, 2006).

The assignment to the UN Human Rights Commission was successfully carried out and completed the draft of the Covenant in accordance with the decision of the UN General Assembly in 1951, and after discussing it article by article, in the end the UN General Assembly approved it through Resolution Number 2200 A (XXI). The International Covenant on Civil and Political Rights (ICCPR) aims to strengthen the main human rights in the civil and political fields contained in the UDHR so that they become legally binding

provisions and their elaboration includes other related points. The Covenant consists of a preamble and articles which include 6 chapters and 53 articles (Joseph, 2019).

In the Preamble to the ICCPR, it states that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the dignity and equal and inalienable rights of all members of humanity is the foundation of freedom, justice and peace in the world. These rights stem from the inherent dignity and worth of every human being. In accordance with the Universal Declaration of Human Rights, the ideal of free human beings to enjoy civil and political freedoms and freedom from fear and poverty, can only be achieved if conditions are created in which everyone can enjoy civil and political rights and also economic, social and cultural rights. Under the United Nations Charter, states are obliged to promote universal respect for and observance of human rights and freedoms. Every human being who has obligations to other humans and to the society of which he is a part, is responsible for promoting and complying with the rights recognized in the ICCPR Covenant.

Part II Article 2 of the ICCPR states: 1) Each State Party to this Covenant undertakes to respect and guarantee the rights recognized in this Covenant for all persons within its territory and subject to its jurisdiction, without distinction of any kind such as race, color, gender, language, religion, political or other opinion, national or social origin, wealth, birth or other status; 2) If it has not been provided for in statutory provisions or other existing policies, each State Party to this Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of this Covenant, to establish statutory provisions or other policies necessary to enforce the rights recognized in this Covenant; 3) Each State Party to the present Covenant undertakes: (a) to ensure that every person whose rights or freedoms recognized in this Covenant are violated, will obtain an effective remedy, even if the violation is committed by persons acting in an official capacity; (b) ensure that any person claiming such remedies must have their rights determined by the competent judicial, administrative or legislative institutions, or by other authorized institutions regulated by the country's legal system, and to develop all possible judicial remedies; (c) guarantee that the authorized institution will implement such settlement if granted (United Nations Information Centre, 2024).

The description explains that at the international level, human rights discourse has experienced very significant developments. According to The Universal Declaration of Human Rights in 1948, two other historical milestones in the enforcement of international human rights were recorded. First, the acceptance of two UN covenants, namely regarding Civil Rights and Political Rights as well as Economic, Social and Cultural Rights. These two covenants were announced in 1966, but only came into force after being ratified by thirty-five UN member states. Second, the acceptance of the Vienna Declaration and its Program of Action by representatives from 171 countries on 25 June 1993 at the UN World Conference on Human Rights in Vienna, Austria (Davendra, 2022). This second declaration is a compromise between the vision of countries in the West and the views of developing countries in upholding human rights.

In Indonesia, the government's seriousness in the field of human rights began at least in 1997, when the National Human Rights Commission was established. Initially, the National Human Rights Commission was established by Presidential Decree Number 50 of 1993. Since 1999 the existence of the National Human Rights Commission has been based on Law Number 39 of 1999. Since, then the issue of upholding human rights in Indonesia has become a serious and continuous discussion. This continuity takes the form of efforts to place human rights issues within the cultural framework and national political system up to the implementation level to form a collaborative network to uphold respect and protection of human rights in Indonesia. This is, despite the existence of international influences that make human rights a global issue, but the enforcement of human rights in Indonesia is more the result of internal dynamics that respond positively to international phenomena (Lahera & Dewi, 2021).

Since 1999, Indonesia has had a rigid and clear legal system in regulating and resolving issues of human

rights violations in Indonesia. The enactment of Law Number 39 of 1999 concerning Human Rights is a dynamic progressive step that should be appreciated in responding to international issues in the field of human rights. The Unitary State of the Republic of Indonesia, with the Pancasila ideology it adheres to, is expected to be able to implement human rights well in accordance with the basic characteristics of the Pancasila ideology which has its own characteristics that differentiate it from other concepts. According to the Pancasila ideology, the human rights of every Indonesian people are basically freedoms, but these freedoms are limited by the human rights of other people (Husnaa, 2023) Even though there is freedom, this freedom must be responsible by paying attention to and not disturbing other people's human rights. Pancasila as a source of human rights values contains three human rights values, namely ideal values, instrumental values and practical values (Pasla, 2023).

This issue is studied in this paper with the problem being the foundation, development and challenges of human rights, especially civil and political rights in Indonesia.

## RESEARCH METHODS

The research model uses descriptive-normative research with a statutory approach and regulations relevant to the civil and political rights issues being studied, as well as a conceptual approach using expert opinions (doctrine), legal principles, and legal theories (Marzuki, 2017). Based on this approach, a legal framework will be obtained to answer problems regarding the urgency of the foundation, development and challenges of civil and political rights in the legal system in Indonesia. The type of data used is qualitative data sourced from primary legal and secondary legal data (Marzuki, 2005).

## RESULTS AND DISCUSSION

### Scope of Civil and Political Rights

Human rights are basic rights that are naturally inherent in humans, are universal and eternal, and therefore, must be protected, respected, maintained, and must not be ignored, reduced or taken away by anyone. The Indonesian nation, as part of the international community, respects, appreciates and upholds the principles and objectives of the United Nations Charter and the Universal Declaration of Human Rights including the International Covenant on Civil and Political Rights (Mahbub, 2019). The international community is aware of the need to translate the basic rights and freedoms stated in the UDHR into legally binding international instruments. In this regard, in 1948, the UN General Assembly asked the UN Human Rights Commission, which had previously prepared a draft of the UDHR, to prepare a draft of the Covenant on Human Rights along with draft measures to implement it (HAM, 2024).

The Human Rights Committee is the main actor at the international level mandated to uphold the rights stated in the ICCPR. However, the instruments used for this purpose have limited scope. Countries are required to submit reports periodically and be carefully reviewed. The Committee summarized its assessment of the existing human rights situation by noting in particular open and straightforward concerns without any diplomatic obstruction. Such observations are not legally binding, and the final views expressed by the Committee after examining individual communications under the ICCPR Optional Protocol do not have binding legal force. Of course, States are expected to carry out in good faith the views expressed by the Committee to them. If they ignore these recommendations, the entire procedure will make no sense. In addition, by formulating "general comments", the Committee has opened a new window of activity, and through these "general comments", this document clarifies the scope and meaning of the provisions of the ICCPR and clarifies general issues that arise in the implementation process (Darajati & Syafei, 2020)

In the history of the Indonesian nation, efforts to promote and protect human rights have experienced ups

and downs. At one time these efforts were successfully fought for, but at other times they were defeated by the interests of power. Finally, national and state life does not pay attention to the promotion and protection of human rights. This creates injustice for society at large and does not provide a healthy foundation for long-term economic, political, social and cultural development (Maylani et al., 2022). The 1998 reform movement inspired the Indonesian people to make corrections to past government systems and practices, especially to re-establish human rights.

### **Civil and Political Rights in the UDHR**

International and National Human Rights instruments regulate Civil and Political Rights. In international instruments, the scope of Civil and Political Rights is regulated in the Universal Declaration of Human Rights. The most basic civil and political rights are the right to freedom of thought and belief, without interference from anyone, including state authorities. This is what is called freedom of religion and belief (Situmorang, 2019). Also related to civil and political rights is the right to be treated equally before the law, and the right not to be killed or tortured. These rights are also known as basic rights, or non-derogable rights, which means the rights included in absolute civil and political rights whose fulfillment by the state may not be reduced under any circumstances (J Efendi, 2020). This, whether in a state of war or in an emergency situation, the state must continue to protect it. The term derogable rights is defined as rights whose fulfillment can still be suspended or limited (reduced) by the state under certain conditions. Meanwhile, the term non-derogable rights means that there are rights which cannot be suspended or limited (reduced) by the state, even in emergency conditions (Nurdjayasakti, 2003).

The concept of Non-Derogable Rights is also embraced by Law Number 39 of 1999 concerning Human Rights, especially in Article 4 which states that: “The right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equal before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances and by anyone”. More concrete regulation of civil and political rights is contained in Articles 9 – 34 of Law Number 39 of 1999, namely the right to life, the right to have a family and continue offspring, the right to develop oneself, the right to obtain justice, the right not to be enslaved, the right to freely embrace religion, the right to express opinions and organize, the right to feel safe, the right not to be tortured, and the right not to be arbitrarily detained.

### **Civil and Political Rights in the ICCPR**

Scope of Civil and Political Rights in the ICCPR, namely regarding restrictions on the use of authority by state officials who act repressively, especially countries that are parties to the ICCPR. For this reason, the rights contained in it are often referred to as negative rights, meaning that the rights and freedoms guaranteed in it will be fulfilled if the role of the state is limited or reduced (Jailani et al., 2021). However, if the state plays an interventionist role, the rights and freedoms regulated therein will be violated by the state. This is what differentiates it from the ICESCR legislative model which actually demands the maximum role of the state to fulfill the rights in the covenant which are often referred to as positive rights (Buana, 2023). The Covenant on Civil and Political Rights includes rights such as the right to life, the right to be free from slavery and servitude, the right not to be subjected to torture or cruel punishment, the right to be treated humanely and not have one’s dignity as a human being degraded, the right to receive recovery according to law, the right to be protected from the application of criminal law due to debt, the right to be free from the application of criminal law which applies retroactively, the right to be recognized as a person before the law, freedom of thought and religious belief. These rights include rights that are classified as non-derogable rights. Article 6 of the Covenant on Civil and Political Rights explains: (1) Every human being has the right to life which is inherent in him or her. This right must be protected by law, and no one can be deprived of their right to life arbitrarily; (2) In countries that have not abolished the death penalty, the death penalty can

only be imposed for some of the most serious crimes in accordance with the law in force at the time the crime was committed, and does not conflict with the provisions of the Covenant and Convention on the Prevention and Law of the Crime of Genocide. This penalty can only be implemented on the basis of a final decision handed down by a competent court; (3) If a deprivation of life constitutes a crime of genocide, it must be understood that nothing in this article authorizes a state that is a party to this Covenant to reduce any obligations imposed by the provisions of the Convention on the Prevention and Punishment of Crimes. Genocide; (4) Every person who has been sentenced to death has the right to request forgiveness or commutation of sentence. Amnesty, pardon or commutation of the death penalty may be granted in all cases; (5) The death penalty may not be imposed for a crime committed by a person under eighteen years of age and may not be imposed on a woman who is pregnant; and (6) Nothing in this Article may be used to delay or prevent the abolition of the death penalty by a country that is a party to this Covenant.

So, civil rights are fundamental freedom rights that are obtained as the essence of human existence (Eko Putro & Kosasih, 2021). This means that civil rights include rights that are inherent in a person, which cannot be taken away or violated arbitrarily by other parties, whether by the state, social organizations or other individuals. Meanwhile, political rights are basic and absolute rights inherent in every citizen which must be upheld and respected by the state under any circumstances. This means that political rights are the rights inherent in a person to participate in social (political) activities in the context of state administration or government. Whether a regime is democratic or not is one of the determining factors in upholding the civil and political rights of citizens (Fatah, 2000).

There are two classifications of rights in the ICCPR, namely non-derogable rights and derogable rights. non-derogable rights are absolute rights which must not be reduced by the party state, even in an emergency (J Efendi, 2020). The rights included in this type are: 1) the right to life; 2) the right to be free from torture; 3) the right to be free from slavery; 4) the right to be free from detention for failure to fulfill debt agreements; 5) the right to be free from punishment with retroactive effect; 6) rights as a legal subject; and 7) the right to freedom of thought, belief and religion. The second classification is derogable rights, namely rights that may be reduced or limited in their fulfillment by party states (Nugraha et al., 2023). Rights including this type are: 1) the right to freedom of peaceful assembly; 2) the right to freedom of association; including forming and becoming a member of a labor union, and 3) the right to freedom of opinion or expression; including the freedom to seek, receive and provide information and all kinds of ideas without regard to boundaries (either through writing or writing).

This means that if a state includes derogation in its law, the state may avoid legal responsibility for certain human rights violations. However, there are some rights that cannot be derogated and some instruments do not allow derogation (Knut D Asplund, Suparnab Marzuki, 2008). Thus, civil and political rights are generally regulated in the International Covenant on Civil and Political Rights, and specifically regulated in various international human rights instruments. States parties to the ICCPR are permitted to reduce or deviate from their obligations in fulfilling these rights, but such deviations can only be made if they are proportional to the threat that disturbs national security or the emergency situation they are facing and are not discriminatory against certain races and ethnicities.

The Indonesian state ratified the ICCPR on October 28 2005 with Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights which was accompanied by a Declaration regarding Article 1 concerning Ratification of the International Covenant on Civil and Political Rights. According to Ihdhal Kasim (2001), civil and political rights are rights that originate from the dignity and are inherent in every human being whose existence is guaranteed and respected by the state so that humans are free to enjoy their rights and freedoms in the civil and political fields which are fulfilled. is the responsibility of the state. According to international human rights law, a state may not intentionally disregard rights and freedoms. On the other hand, the state has a positive

obligation to actively protect and ensure the fulfillment of rights and freedoms. Regarding freedom of expression, a country may provide freedom by placing few restrictions. Regarding the right to life, states must not accept a passive approach. The state is obliged to make legal regulations and take steps to protect rights and freedoms in a positive manner that is acceptable to the state. For this reason, the state is obliged to make legal regulations that prohibit killing to prevent non-state actors from violating the right to life. The emphasis is that the state must be proactive in respecting the right to life and not be passive (Knut D Asplund, Suparnab Marzuki, 2008).

The responsibility for protecting and fulfilling all the rights and freedoms promised in the ICCPR lies with states, especially those that are States Parties to the ICCPR. This is confirmed in Article 2 paragraph (1) of the ICCPR which states that: “Every state party to this covenant undertakes to respect and guarantee the rights recognized in this covenant for all individuals within its territory and within its jurisdiction, without distinction of type.” anything, such as race, color, sex, language, religion, political or other views, national or social origin, property rights, birth status or other status.” If the rights and freedoms contained in this Covenant have not been guaranteed in the jurisdiction of a party state, then that state is required to take legislative or other necessary action to make the protection of these rights effective as specified in Article paragraph (2) of the ICCPR. Another obligation of the state party is to guarantee effective restoration of rights from a violation of civil and political rights even though the perpetrator acts as a state official as stipulated in Article 2 paragraph (3) of the ICCPR. Protection and fulfillment of rights and freedoms obligations in the ICCPR by the state are absolute and must be carried out immediately (immediately) or must be legal (justiciable) (Jatmiko, 2018). Regulations on Civil and Political Rights in the ICCPR include: 1) The right to life (Article 6); 2) Freedom from torture and inhumane treatment (Article 7); 3) Freedom from slavery and forced labor (Article 8); 4) The right to personal freedom and security (Article 9); 5) Detainee’s right to humane treatment (Article 10); 6) Freedom from detention for debt (Article 11); 7) Freedom to move and choose a place to live (Article 12); 8) Freedom for foreigners (Article 13); 9) The right to a fair trial (Article 14); 10) Protection from arbitrariness of criminal law (Article 15); 11) The right to equal recognition before the law (Article 16); 12) The right to personal freedom (privacy) (Article 17); 13) Freedom to think, believe and religion (Article 18); 14) Freedom of opinion and expression (Article 19); 15) Prohibition of war propaganda and discrimination (Article 20); 16) The right to assemble (Article 21); 17) Right to organize (Article 22); 18) The right to marry and start a family (Article 23); 19) Children’s rights (Article 24); 20) Political rights (Article 25); 21) Equality before the law (Article 26); 22) Rights for minorities (Article 27).

### **Civil and Political Rights in the 1945 Constitution**

Human Rights (HAM) are an intrinsic part of the democratic order, because human rights values and principles are more or less the same as democratic values and principles. In Indonesian positive law, the doctrine of limitation also appears in the State Constitution (Aswandi, 2019). According to the Constitution, “In exercising his rights and freedoms, every person is obliged to comply with restrictions determined by law with the sole aim of ensuring recognition and respect for the rights and freedoms of other people and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.” Likewise, when the 1945 Constitution was amended 4 (four) times, one of the very crucial issues at that time was human rights, which was then accommodated into a special chapter on human rights. Basic rights that are universally recognized are now receiving strong recognition by the state, these rights have also become constitutional rights guaranteed by the highest law (Triputra, 2017). Human rights in the 1945 Constitution can be classified into four groups, namely civil and political rights; economic, social and cultural rights; development rights and other special rights; as well as state responsibility and human obligations. In addition, there are rights which are categorized as rights that cannot be reduced under any circumstances (non-derogable rights) which include the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to

recognized as a person before the law, and the right not to be prosecuted on the basis of law that applies retroactively.

As the highest source of law in Indonesia, the 1945 Constitution is the reference for all statutory regulations under it. The concept of human rights has become more clearly regulated in the sense that it has a separate place, namely in Chapter XA, plus several articles outside that chapter which still contain human rights material. The content of civil and political rights in the 1945 Constitution can be read in Article 27 concerning equality in law, Article 28 concerning freedom of association and assembly, Article 28A concerning the right to life, Article 28B concerning the right to family, Article 28C concerning the right to develop oneself, Article 28D concerning the right receive fair legal treatment and legal certainty, Article 28E concerning the right to religion, Article 28F concerning the right to communicate, and Article 28G concerning the right to a sense of security. The concept of non-derogable rights is also adopted in the 1945 Constitution (J Efendi, 2020), namely in Article 28I which states that: “The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on any legal basis.” retroactively is a human right that cannot be reduced under any circumstances.” This limitative mention gives the implication that other rights outside this article are considered derogable rights.

This is, even though there is a construction of restrictions on civil and political rights in legal products in Indonesia, the basic nature of human rights cannot be eliminated or revoked and is total and comprehensive for every human being. Based on the agreed Siracusa principles, derogations and limitations are possible and can be applied to certain situations or conditions that are deemed to endanger the public interest. The basic construction of the provisions for limiting civil and political rights in Indonesia can be found in Article 28J Paragraph (1) of the 1945 Constitution which states that: “...Every person is obliged to respect the human rights of other people in orderly life in society, nation and state.”. This article emphasizes ‘basic’ obligations which are not actually mainstream doctrine in the discipline of human rights. The provisions of paragraph (1) of Article 28J are then continued with provisions regarding restrictions on human rights in the next paragraph. Furthermore, paragraph (2) of the article states that: “... in exercising his rights and freedoms, every person is obliged to comply with the restrictions determined by law with the sole aim of ensuring recognition and respect for the rights and freedoms of other people and to fulfill the demands which is fair in accordance with moral considerations, religious values, security and public order in a democratic society.” The provisions of paragraph (2) expressly state that the anatomy of human rights restrictions includes the following legal elements. *First*, it is carried out by law, because the provisions of various international instruments on human rights emphasize that the form of limiting human rights is law, not other forms that are inferior. This provision is to ensure the realization of the principle of non-discrimination. This means that the restrictions are stated in the form of a law, so these restrictions are automatically issued by the legislative body which actually has the political and legal authority to issue restrictions (Mujaddidi, 2021). The form of law is chosen to provide legal force that provides more certainty (*lex certa*). It is hoped that the legal power contained in the law will close or at least narrow to a minimum the space for the political desires of certain government regimes to use the doctrine of restrictions on human rights for the narrow political interests of the government regime in question. *Second*, with the aim of ensuring recognition and respect for the rights and freedoms of other people and to fulfill fair demands, these restrictions are to protect the freedoms and universal rights of other people. Thus, it is not justified if it is based on the will (consent) to limit one particular group in order to protect the interests of another particular group. *Third*, it is based on several considerations, namely: a) morals, b) religious values, c) security, d) and public order in a democratic society (Antari & Liska, 2020). This means that these restrictions must take into account the moral aspects and religious values found in a country’s society. In this context, civil and political rights provide space for the adoption of local norms relating to morals and religion to limit civil and political rights. Apart from that, restrictions can also be carried out by considering security and public order factors both related to social, legal and political orders. Thus, the considerations

used in these limitations provide considerable space for particularity in human rights. This is because aspects of local norms, religion, security and public order basically have a high contextual dimension and depend on the locality of the community or citizens in a country. Morals and religion in one locus are definitely different from those in other loci. Likewise, security and public order in a society or country are definitely not the same as the dynamics of security and order in another society or country.

### **Civil and Political Rights in Law Number 39 of 1999 concerning Human Rights**

Regulations regarding political rights (such as the right to vote and be elected) of every person, have been emphasized in Article 43 paragraphs (1), (2) and (3) of Law Number 39 of 1999. Therefore, every citizen has the same rights without having to have restrictions either directly or indirectly in any form or by any means. Furthermore, in Article 8 jo. Article 71 of Law Number 39 of 1999 states that the protection, promotion, enforcement and fulfillment of human rights is primarily the responsibility of the state. The government's obligations and responsibilities according to Article 72 of Law Number 39 of 1999 include effective implementation steps in the fields of law, politics, economics, social, culture, national defense and security, and other fields. This provision also includes the protection, promotion, enforcement and fulfillment of civil and political rights and freedoms. Article 28I paragraph (4) of the 1945 Constitution also states that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.

The state's task in fulfilling civil and political rights is actually to fulfill, respect and protect human rights. However, carrying out their duties has a negative dimension of rights. This means that fulfillment occurs if the state does not intervene (violate) a person's civil and political rights, or in other words, the less the state's role in regulating these rights, the better the state's duties towards civil and political rights (Jakarta, 2018). This negative dimension of civil and political rights is not fully understood by the state. The state should not do this because it shows the state's attitude of not respecting human dignity. The state forgets that no one can be deprived of their right to life for any reason. On the other hand, the state actually becomes a passive violator of civil and political rights itself. This is done in various forms, such as the state's deliberate neglect of the restoration of the rights of victims and families of victims of past human rights violations, the state's lack of firmness towards perpetrators of closing places of worship and law enforcement against state officials who commit torture. The state's reverse logic regarding its responsibility for civil and political rights shows that the state should not be present, but instead the state is present and causes human rights violations (Jakarta, 2018).

In summary, it can be said that the political rights of the Indonesian people are guaranteed by the 1945 Constitution, namely the right to form and enter political organizations or other organizations which at certain times involve themselves in political activities; the right to assemble, associate, the right to express views or thoughts about politics, the right to hold political positions in government, and the right to vote in general elections. Everything is realized purely through political participation, while the overall use of civil political rights is divided into two groups:

1. Political rights are reflected by the political behavior of society. Usually, the use takes the form of voting rights in general elections, involvement in political organizations and community participation in political movements such as demonstrations and riots.
2. Political rights are reflected in the political behavior of elites. In this case, elite behavior is understood through the procedures for treating power, the use of power and the forms of power relations between elites and with society.

Moh. Kusnardi and Hermaily Ibrahim (1985) stated that in the understanding of popular sovereignty (democracy) it is the people who are considered the owners and holders of the highest power in a country. It is the people who determine the style and way the government is run. It is the people who determine the



goals to be achieved by the state and its government. In practice, technically carrying out popular sovereignty is an executive government that is directly elected by the people and the people's representatives in the people's representative institution or parliament. It is the people's representatives who act for and on behalf of the people, who politically determine the style and way the government works, as well as the goals to be achieved both in the long and short term. In order for the people's representatives to act on behalf of the people, the people's representatives must be determined by the people themselves. The mechanism is through general elections. Thus, in general, the purpose of general elections is to enable a safe and orderly transition of government, and to implement people's sovereignty and to implement the human rights of citizens.

Citizen participation in general elections is an expression of efforts to implement popular sovereignty as well as in the context of implementing human rights. General elections are a *conditio sine quanon* for a modern democratic country, meaning that the people elect someone to represent them in the context of people's participation in the administration of state government, as well as a series of political activities to accommodate the interests or aspirations of the people. In the context of humans as individuals, general elections mean the process of temporarily surrendering their political rights. This right is a sovereign right to participate in running the state.

### **Civil and Political Rights Challenges**

The implementation of popular sovereignty cannot be separated from general elections because general elections are a logical consequence of adhering to the principle of popular sovereignty in national and state life. The basic principle of democratic state life is that every citizen has the right to actively participate in the political process. In Indonesia, general elections are a normative interpretation of the 1945 Constitution so that the achievement of a democratic society is possible. This democratic society is an interpretation of the implementation of popular sovereignty. In this case, popular sovereignty is only possible to operate optimally if the people have a strong tendency towards a participant political culture. Those who are elected are considered to be people or groups who have the ability or obligation to speak and act on behalf of a larger group through a political party (Mahfud, 2017).

Political participation is the essence of democracy, so whether a political system is democratic or not can be determined by the presence or absence or high or low level of political participation of its citizens. The minimum standard for democracy is usually free, regular elections to ensure rotation of those in control of the state without the exclusion of any political group. The active participation of citizens in elections and in the process of determining policies guarantees the implementation of human rights which gives citizens the freedom to organize themselves in free civil organizations or political parties, and express opinions in public forums and mass media. Therefore, it is not an exaggeration when Maurice Duverger says that where there are independent and free elections there is democracy (Saragih, 1998).

The political rights of citizens are part of the rights possessed by citizens with the principles of statehood that are adhered to, namely the principles of democracy. More broadly, political rights are part of the right to participate in government. The right to participate in government can be said to be a very important part of democracy. This right can even be said to be the embodiment of democracy, so that if this right does not exist in a country, then that country should not recognize itself as a democratic country. Countries that adhere to democracy generally accommodate the political rights of their citizens in holding general elections, whether direct or indirect. Elections are one of the characteristics that must exist in a democratic country. Thus, elections are an important tool for the people in state life, namely by electing their representatives who in turn will control the wheels of government. The results of general elections, which were held in an atmosphere of openness with freedom of opinion and freedom of association, are considered to accurately reflect the aspirations and participation of the community (Budiarjo, 2008).

The implementation of civil and political rights in general elections recognizes universal suffrage. This right to vote is one of the fundamental prerequisites for a country that adheres to modern constitutional democracy. Citizens' voting rights are guaranteed in various legal instruments. Article 21 of the Universal Declaration of Human Rights (UDHR) stipulates that: (1) Everyone has the right to participate in the government of his own country, either directly or through freely chosen representatives; (2) Every person has the right to an equal opportunity to be appointed to a government position in his country; (3) The will of the people must be the basis of government power; This will must be expressed in periodic elections that are honest and carried out according to general and equal suffrage, as well as by secret ballot or according to other methods that also guarantee freedom of expression.

Article 27 paragraph (1) of the 1945 Constitution also stipulates that "all citizens have the same position under the law and government and are obliged to uphold the law and government without exception." Likewise, Article 43 of Law Number 39 of 1999 regulates the right to vote, which stipulates that: "Every citizen has the right to be elected and vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with the provisions of statutory regulations." Political rights developed in line with the growth of the state system which was institutionalized into a parliamentary system. Political rights related to the decision-making process are realized in the form of participation by giving the right to vote during elections (Fachruddin, 2006). This shows that the Indonesian government is taking concrete steps through the National Human Rights Action Plan (RAN-HAM) policy. There are four pillars of the action plan, namely: 1) Ratification of 8 international instruments in the field of human rights in the period 1998-2003; 2) Dissemination and education of human rights; 3) Implementation of human rights determined as a priority, especially rights that cannot be reduced; and 4) Implementing the provisions of international conventions that have been ratified (Salam, 2006).

The right to vote is also stated in the International Covenant on Civil and Political Rights (ICCPR) which Indonesia has ratified with Law no. 12 of 2005. Article 25 of the ICCPR determines that, "Every citizen must also have rights and freedoms, without any distinction as intended in Article 2 and without unreasonable restrictions, such as; a) participate in the implementation of government affairs, either directly or through freely chosen representatives; b) choose and be elected in honest periodic general elections, and with universal and equal suffrage, and carried out by secret ballot to guarantee freedom in expressing the will of the voters; c) obtain access to public services in their country on an equal basis."

The right to vote is also regulated in Article 1 Paragraph (2), Article 6A (1), Article 19 Paragraph (1), and Article 22C (1) of the 1945 Constitution. These provisions indicate that there is an inherent juridical guarantee for every Indonesian citizen to be able to carry out his right to vote. This provision also emphasizes that all forms of legal products in the form of legislation regulating general elections should open the widest possible space for every citizen to be able to exercise their right to vote in general elections. According to Moh. Mahfud (1998) if an examination of the relationship between law and politics is carried out, there are at least three types of answers that can provide an explanation, namely: *first*, legal determinants of politics, which means that political activities are regulated by and must be subject to legal rules. *Second*, politics is the determinant of law, because law is the result or crystallization of political wills that interact with each other and (even) compete with each other. *Third*, politics and law as social subsystems are in an equal position with balanced determination between one another. Thus, when law appears, all political activities must be subject to legal rules, even though law is the product of political decisions.

As stated above in the International Civil and Political Covenant, it is stated that the existence of basic human rights and freedoms is classified into two types: first, the neo-derogable category, namely rights that are absolute and cannot be reduced, even in an emergency. This right consists of; (i) right to life; (ii) right to be free from slavery; (iii) the right to be free from detention for failure to comply with the agreement (debt);

(iv) the right to be free from retroactive punishment, the right to be a legal subject, and to freedom of thought, belief and religion. The second type is the derogable category, namely rights whose fulfillment may be reduced/limited by the state party. The rights and freedoms included in this type include (i) the right to freedom of peaceful assembly; (ii) the right to freedom of association, including forming and becoming members of workers; and (iii) the right to freedom of expression/opinion; including the freedom to seek, receive and provide information with all kinds of ideas without regard to boundaries (either verbally/in writing). However, countries party to the ICCPR are allowed to reduce obligations in fulfilling these rights. However, deviations can only be made if they are proportional to the threat faced and are not discriminatory, namely for the sake of; (i) maintain public security/morality, and (ii) respect the rights/freedoms of others. Law enforcement (law enforcement) in a broad sense includes activities to implement and apply the law as well as taking legal action against any violations or deviations from the law committed by legal subjects, either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (alternative disputes or conflicts resolution) (Asshiddiqie, 2014).

Law no. 39 of 1999 explicitly affirms the nomenclature of recognition. Recognition is the heart of human rights, because rights cannot be built on denial. That is why the discussion about recognition is central. The state's actions to provide legal protection for the principles of recognition are called by Charles Taylor the politics of recognition (Dalam Diarsa, 2019). According to him, recognition in the dynamics of political movements has at least the following four dimensions:

1. As a demand that is put forward in various political activities today. In this statement, the absence of acknowledgment or acknowledgment by only one party can trigger danger which may take the form of repression, wrongful imprisonment of a person and deviation or reduction of a person's dignity as a human being.
2. As a demand or need for some minority groups. This statement suggests that a person's identity is partly shaped by the presence or absence of recognition, often by misrecognition about others and also that a person or group of people can suffer real damage, real distortion or an insulting image of themselves.
3. As a demand or need in several forms of the feminist movement. For feminists, women in society are hegemonically forced to adopt an image that degrades themselves. They are fed with images of their own inferiority. This is what then encouraged them to carry out a movement to gain equal recognition (gender equality) with men in their community.
4. As a demand in what is now known as political multiculturalism. The diversity of cultures, ethnicities and other particular aspects of society is a natural or natural reality. However, the history of human civilization shows how diversity based on differences actually gives rise to long-lasting hostility.

Basically, the ICCPR contains provisions regarding restrictions on the use of authority by state officials who wish to act repressively, especially countries that are parties to the ICCPR. This is what differentiates it from the ICESCR legislative model which actually demands the maximum role of the state to fulfill the rights in the covenant which are often referred to as positive rights. Many facts show that issues related to upholding human rights are problems that are felt to be increasingly serious and urgent to be realized. Not only is it a domestic objective need of a nation but it is also an international objective need. To show the facts, several examples of cases that have occurred to date can be described, such as; Israeli Zionism's continued and indiscriminate oppression of the Palestinian people, the Myanmar military regime's oppression of the Rohingya Muslims, the conflict between Russia and Ukraine, and various other humanitarian problems.

The International Covenant on Civil and Political Rights has been ratified by Indonesia through Law Number 12 of 2005. Thus, all provisions in this covenant also apply at the national level. The following are details of civil and political rights in Law Number 12 of 2005 which is a ratification of the international covenant on civil and political rights, including, Article 6 "Right to life (not to be killed/sentenced to death,

at least for children under 18 years)". Article 7 "The right not to be tortured, treated or punished in a cruel, inhuman or degrading manner (including not being abducted/forcibly disappeared, raped)." Article 8 "The right not to be enslaved (prohibition of all forms of slavery, human trafficking and forced labor)." Article 9 "The right to freedom and personal security (not to be arrested or detained arbitrarily, based on the provisions of criminal procedural law)." Article 10 "Rights as suspects and defendants (treated humanely, children separated from adults, the prison system aims at reform and rehabilitation)." Article 11 "The right not to be imprisoned for failure to fulfill contractual obligations (debt or other agreements)." Article 12 "The right to freedom of movement and domicile (including leaving and returning to one's own country)." Article 13 "Rights as a foreigner (can be expelled only in accordance with the law or convincing reasons regarding national security interests)." Article 14 "Right to equal standing before the law (proven guilty by a competent and impartial court, minimum guarantee, can be reviewed, not tried twice in the same case)." Article 15 "The right not to be punished based on a law that applies retroactively (if the legal provisions come out before the crime, the perpetrator must receive relief)." Article 16 "Rights as a legal subject (every person's civil right such as citizenship)." Article 17 "Personal rights (not to be interfered with or disturbed in private matters such as confidentiality, family or household, honor, correspondence or private communications)." Article 18 "The right to freedom of thought, religion and belief (adhering to an ideology or political orientation, holding a religion or belief)." Article 19 "The right to freedom of opinion (including seeking, receiving and disseminating information, in the form of works of art/expression or through other means)." Article 20 "The right to be free from war propaganda and racial incitement (hatred on the basis of nationality, race, religion or class)." Article 21 "The right to freedom of assembly (holding meetings, processions or crowds)." Article 22 "The right to freedom of association (joining an association, political party or labor union)." Article 23 "The right to marry and form a family (not forced, including responsibility for children)." Article 24 "Children's right to obtain protection and guarantees (every birth of a child is registered and obtains citizenship without discrimination)." Article 25 "The right to participate in politics (including voting, being elected and not voting)." Article 26 "The right to be free from discrimination in law (everyone is protected by law without discrimination)." Article 27 "Rights of minority groups (need special protection)." States party to the ICCPR are permitted to reduce or make deviations from their obligations in fulfilling these rights, but such deviations can only be made if they are proportional to the threat that disturbs national security or the emergency situation they are facing and are not discriminatory against race or ethnicity.

## CONCLUSION

The essence of enforcing civil and political rights is to protect individuals from abuse of power from those in power, and even more so with the shift in the functions and duties of the state from the function of the state merely as a night watchman to the function of realizing the welfare of citizens (welfare state). The existence of widespread state intervention in all aspects of society's life requires the existence of a kind of orderly legal regulations to protect the state's arbitrary treatment of citizens. In principle, every democratic country contains guarantees of human rights including civil and political rights of every person or resident in the 1945 Constitution. However, everything really depends on the political will or enthusiasm of state administrators to provide space for the existence, protection and fulfillment of civil and political rights. At this level, efforts are needed from both parties to prevent acts of oppression or restrictions on the implementation of the civil and political rights of every person or citizen in that country. The struggle to enforce civil and political rights began long before these rights were guaranteed in the International Covenant.

If you look closely at the civil and political rights listed in the ICCPR and also in national instruments on human rights, they can be classified into two parts, namely: *first*, absolute rights or in other words rights that must be upheld, protected and respected under any circumstances, *second*, the rights which may be reduced by the state. On the other hand, empirically there are several parameters regarding the existence of civil and

political rights in a country. Another obligation of the state, which is no less important, is the obligation to provide effective remedial action for victims of violations of the rights or freedoms contained in this Covenant. A country's legal system is required to have effective tools in dealing with the rights of victims. Civil rights vary from country to country due to differences in democracies, but it is possible to point out a few civil rights that remain largely general and universal. Countries that adhere to a democratic political system that can provide guarantees and protection for civil and political rights. This is because civil and political rights are classified as negative rights, meaning that these rights and freedoms will be fulfilled if the role of the state is limited.

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