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PROVISIONS REFORMULATION FOR THE RESPONSIBILITY OF HUMAN RIGHTS FULFILLMENT

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Abstract. Fulfillment of human rights, especially social security rights based on the 1945 Constitution of the Republic of Indonesia, still does not show justice for all Indonesian citizens. This happens because of the blurring of norms in the regulation of responsibility for fulfilling human rights, namely about who are the legal subjects who must be responsible and the scope of the scope of their responsibilities in the implementation of social security according to the 1945 Constitution of the Republic of Indonesia. This research aims to find out how the formulation arrangement of responsible subjects and the scope of their responsibilities in fulfilling human rights including the right to social security in Indonesia. This type of research is normative juridical, with a philosophical approach, a conceptual approach, and a statutory approach. Data analysis was carried out using qualitative techniques with descriptive analysis. The results of the study show that the formulation of responsible subject arrangements and the scope of their responsibilities in fulfilling human rights including the right to social security is to make clear and firm legal rules to regulate the responsibility for fulfilling human rights including the scope of fulfilling these human rights, parties who has responsibility, as well as the scope of responsibility in the implementation of social functions in the 1945 Constitution of the Republic of Indonesia.

Keywords: *human rights, social security rights, arrangements, formulations, Indonesia.*

Rezumat. Satisfacerea drepturilor omului, în special a drepturilor de securitate socială bazate pe Constituția din 1945 a Republicii Indonezia, încă nu arată dreptate pentru toți cetățenii indonezieni. Acest lucru se întâmplă din cauza estompării normelor în reglementarea răspunderii pentru îndeplinirea drepturilor omului, și anume despre cine sunt subiecții juridici care trebuie să fie responsabili și sfera de aplicare a responsabilităților lor în implementarea securității sociale conform Constituției din 1945 a Republica Indonezia. Această cercetare își propune să afle modul în care formularea subiecților responsabili și domeniul de aplicare al responsabilităților acestora în îndeplinirea drepturilor omului, inclusiv dreptul la securitate socială în Indonezia. Acest tip de cercetare este juridic normativ, cu o abordare filozofică, o

abordare conceptuală și o abordare statutară. Analiza datelor a fost efectuată folosind tehnici calitative cu analiză descriptivă. Rezultatele studiului arată că formularea aranjamentelor cu subiecte responsabile și domeniul de aplicare al responsabilităților acestora în îndeplinirea drepturilor omului, inclusiv dreptul la securitate socială este de a stabili norme juridice clare și ferme pentru a reglementa responsabilitatea pentru îndeplinirea drepturilor omului, inclusiv domeniul de îndeplinire a drepturilor omului, părțile care au responsabilitatea, precum și domeniul de aplicare a responsabilităților în punerea în aplicare a funcțiilor sociale în Constituția din 1945 a Republicii Indonezia.

Cuvinte cheie: *drepturile omului, drepturile de securitate socială, aranjamente, formulări, Indonezia.*

1. Introduction

Through the Constitution of the 1945 Constitution, the Indonesian State asserts itself as a welfare state, a state that was established with the goal of realizing general welfare and social justice for all Indonesian people. The welfare state places "an active state role in managing and organizing the economy" including including the state's responsibility to ensure the availability and fulfillment of welfare services for the basic needs of its citizens. However, social facts show that there are still many Indonesian citizens who do not get services and fulfill their rights to social security, namely the right to health social security. 2019 Reaches 267 million people, this shows the ontological fact that there is injustice in citizens' access to social security rights, which are human rights that should be fulfilled. Based on this data, it is estimated that there are 44 million people who do not have access to health social security services from the state [1].

Even though the 1945 Constitution as the highest Constitution has specifically regulated social security, at least in the provisions of Article 28H paragraph (3) which formulates "everyone has the right to social security which enables his/her full development as a dignified human being", as well as Article 34 paragraph (2)) which was formulated "the state develops a social security system for all people and empowers people who are weak and unable in accordance with human dignity" [2]. The inclusion of the right to social security in the constitution shows the seriousness and importance of the state's responsibility in granting this right to its people. Even though, as usual, a constitution only regulates norms that are generally accepted, it does not regulate strict and technical norms. However, the formulation of norms in the 1945 Constitution does not clearly place who is the subject who must be responsible and the scope of his responsibility in fulfilling social security rights for his people.

Theoretically, the concept of a welfare state or social welfare state places a state whose government is fully responsible for meeting the basic, social and economic needs of every citizen to achieve a decent standard of living. And in accordance with the science of legislation, the principle of *lex superior derogat inferiori* applies, meaning that higher regulations override lower regulations. In other words, the higher rules become the basis of value for the lower rules. Therefore it is necessary to affirm the meaning and/or clarity of legal norms in the regulation of social security, so that the regulation of the implementation of social security does not go outside the scope of the legal subjects responsible for fulfilling social security for Indonesian citizens and the scope of their responsibilities.

Juridically, the 1945 Constitution is the highest constitution or law in the legal system in Indonesia, so all rules in the form of laws and other implementing regulations should

perfectly implement the intent of the articles of the 1945 Constitution. Laws that provide a comprehensive elaboration in articles according to the article, relating to the rights and obligations as well as the responsibilities of the government and other subjects in fulfilling human rights including the social security rights of every citizen (Indonesian citizen) in accordance with the intent of the Constitution or the constitution, however, the blurring of norms in the 1945 Constitution in regulating the responsibility for fulfilling human rights Human rights including social security rights have given rise to legal interpretations by legislators who place the responsibility of the government only to provide assistance to those who cannot afford it, as stipulated in the Law on the National Social Security System.

2. Research Method

This research is a normative juridical research. This research method is a legal research method that bases its analysis on applicable laws and regulations that are relevant to the research topic. Based on its type, the legal materials in this study consist of primary legal materials (consisting of the 1945 Constitution, the RIS Constitution, the UUDS, the 1945 Constitution, and the 1945 Constitution of the Republic of Indonesia, along with their discussion texts, as well as the Rulings of the Constitutional Court of the Republic of Indonesia), legal materials secondary (consisting of international instruments resulting from congresses of world bodies (UN) and ILO (International Labor Organization) which contain international policies in the field of Social Security and Human Rights, legal doctrines, concepts, theories and expert opinions related to constitutional law and Social Security contained in written form (books, texts, legal journals and papers or views of legal experts published in the mass media) as well as direct interviews to deepen analysis), and tertiary legal materials (consisting of the Big Indonesian Dictionary and the Legal Dictionary (black's Law Dictionary) which provides definitions of etymology (word or grammatical meaning) for the term -certain terms especially those related to the title variable component). Data collection techniques were carried out through literature and internet searching. Data analysis was carried out using qualitative methods which were presented systematically by analyzing descriptive analysis [3].

3. Results and Discussion

3.1 Comparison of Formulation of Norms of Responsible Subjects in Fulfilling Human Rights in the Constitutions of Other Countries and Fulfillment of Social Security Rights

As a comparison, we can see the provisions in two other countries in the Southeast Asia region, namely Thailand and the Philippines. Human rights content material in the 1997 Thai Constitution. In chapter III on the Rights and Liberties of the Thai People, approximately 40 human rights articles are found, namely from articles 26 to 65 which are very comprehensive covering civil, political, economic, social, and culture [4]. The formulation of human rights articles seems to be made as broad as possible to avoid misunderstandings due to various interpretations. Apart from that, the obligations of citizens and the government are also found in chapter IV concerning Duties of the Thai People and chapter VI regarding Directive Principles of Fundamental State Policies. There are approximately 25 articles in total, namely from article 66 to article 89. Another comparison can also be seen in the 1987 Philippine Constitution. Regulations regarding human rights are found in chapter III concerning the Bill of Rights, totaling 22 articles. Apart from that, it is also found in Chapter XIII on Social Justice and Human Rights, totaling 19 articles. Interestingly, the human rights

content material in chapter XIII contains various human rights provisions such as economic, social, women's, labor, health, and community organization rights [5]. The two constitutions of countries whose territory coincides with Indonesia in Southeast Asia have in fact carried out comprehensive constitutional reforms. The political struggles in the two countries clearly had an influence on the birth of the constitution, and these factors are clearly different from the Indonesian context. However, one thing that is important to emphasize is that the constitutions of the two countries have a firm and clear commitment to upholding law and human rights. Indeed, the birth of the constitutions of Thailand and the Philippines is not as simple as imagined. In contrast to Indonesia, the two constitutions were actually designed by an independent constitutional commission consisting of those who were outside the structure of power so that they were away from general political interests for a moment so that total constitution reform was carried out successfully.

Constitutional guarantees for human rights cannot be ignored. Ignoring human rights is also neglecting law enforcement. On that basis, as a "national autobiography", the arrangements and forms of human rights guarantees in the 1945 Constitution must be a serious concern of all components of the nation. The importance of constitutional guarantees for human rights proves the commitment to a democratic life under the rule of law. Indeed, Indonesia, according to Todung Mulya Lubis, has not yet reached that direction, even though human rights issues and protection are regulated in laws and regulations such as the Environmental Law, the Human Rights Law, the Human Rights Court Law, the Press Law, and the Consumer Law, and so on. However, it should be kept in mind that this only revolves around its capacity as legal rights. What the Indonesian people need is not just legal rights, but guaranteed constitutional rights which are stated in a systematic and comprehensive manner in the "autobiography of Indonesia", namely the Constitution of the Republic of Indonesia. What is even more important is that the journey of the democratic dialectic process that occurs in Indonesia must be a valuable lesson in reformulating constitutional guarantees for human rights based on the Indonesian paradigm. More than that, better guarantee of human rights in the constitution and laws and regulations will be a great opportunity for the realization of law enforcement and human rights in an accountable and fair manner. So, it is time for all the nation's children to have the courage to continue to carry out the reconstruction of their democracy in a more mature and dignified manner towards a modern and authoritative Indonesia, not only in the eyes of the international community, but also before the nation's children. From this exposure and discussion, it can be concluded as follows:

1. The concept of a rule of law was born as a historical necessity. The constitution appears as a constitutive affirmation of human rights which are fully guaranteed by state administrators. Law enforcement in the conception of a rule of law is the upholding of human rights and the most important indicator of a democratic principle.

2. The term human rights is not found in the 1945 Constitution. Human rights in the 1945 Constitution are regulated briefly and simply. The 1945 Constitution is more oriented towards rights as citizens (HAW). In the 1949 RIS Constitution and the 1950 UUDS, human rights arrangements contain relatively more complete articles on human rights. Not only the scale of rights, their realization and enforcement can be seen through the presence of basic constitutional obligations. Human rights arrangements were confirmed in the Second Amendment to the 1945 2000 Constitution. The content of these human rights far exceeds the provisions previously regulated in the 1945 Constitution. Human rights are regulated in

a separate chapter, namely Chapter XA on Human Rights which consists of 10 articles, starting from the provisions in Article 28A to 28J.

3. All constitutions that have ever been in force in Indonesia recognize that the position of human rights is very important. It's just that all constitutions are different in translating human rights content material in the Constitution. Period I of the 1945 Constitution (1945-1949) only emphasized the status of citizens' human rights (HAW). The 1949 RIS Constitution (1949-1950) and the 1950 UUDS (1950-1959) provided strict legal certainty regarding human rights. It's just that it is relatively inapplicable due to time issues and an unstable political atmosphere. re-applicability; Period II of the 1945 Constitution (1959-1998) was not much different from the content of human rights in the 1945 Period I of the 1945 Constitution. In the development of the policies of the New Order Government to the Reform Order (before and after Amendment II of the 1945 Constitution of 2000), several policy sets of laws and regulations can be said to complement human rights regulations in Indonesia in the form of statutory regulations, such as the MPR Decree, Law. Laws, Presidential Decrees, and so on. Efforts to provide guarantees for human rights enforcement as an implementation of human rights content material in the Second Amendment to the 1945 Constitution still require public scrutiny. Likewise with the level of consistency of all provisions in laws and regulations that regulate human rights.

3.2 Clarity Regarding Formulation of Norms of Legal Subjects and Their Responsibilities in the 1945 Constitution Through the Fifth Amendment

Regulation of human rights in Indonesia is based on the 1945 Constitution, which emphasizes that in order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in statutory regulations, is by stipulating Law Number 39 of 1999 Concerning Human Rights (although it was formed before the amendment to Article 28 of the 1945 Constitution) [6]. Law Number 39 of 1999 concerning Human Rights which was promulgated on 23 September 1999 is seen as one of the implementing regulations of the MPR Decree Number XVII/MPR/1998 Concerning Human Rights [7], this can be seen in one of its legal bases which include this decision. At the time that Law Number 39 Year 1999 was being discussed, there were several opinions divided into 2 (two) broad categories, namely the opinion which stated that basically the provisions regarding human rights were scattered in various laws, and therefore there was no need to make a special law on human rights. Another opinion states that the formulation of a law on specific material on human rights needs to be carried out bearing in mind that the MPR Decree does not apply operationally and the various existing laws do not fully accommodate human rights material. In addition, the law will function as an umbrella law for existing laws and regulations in the field of human rights. From the point of view of the science of legislation, criticism of provisions related to human rights contained in Law Number 39 of 1999 includes, among others, the following [8].

1. There are provisions that do not contain norms or principles, and this is shown by the existence of a chapter on basic principles. The basic principles in principle are not legal rules or norms. So, the principle does not need to be explicitly contained in the law but will animate the articles contained in the relevant law.

2. Deviations from the legal principle that the law does not apply retroactively should not be placed in the Explanation section, but in the Body part which is regulated in the law.

This is because the Explanation does not contain norms or rules. Or in other words, Explanation does not function to create a rule of law.

With regard to the regulated substance or material, the grouping of human rights consists of the right to life, the right to have a family and continue offspring, the right to self-development, the right to obtain justice, the right to personal freedom, the right to feel safe, the right to welfare, the right to participate in government, women's rights, and children's rights. Similar to MPR Decree No. XVII/MPR/1998, Law No. 39/1999 does not explicitly state the reasons for categorizing human rights. In the Explanation section it is only stated that the drafting of Law Number 39 of 1999 was guided by the UN Convention on the Elimination of All Forms of Discrimination against women, the UN Convention on the rights of the child, as well as various other international legal instruments that regulate human rights. Even though it is not strictly grouped, basically human rights material includes human rights in the civil, political, economic, social and cultural fields. Still related to the substance of the law, it seems that Law Number 39 of 1999 mixes the basic principles with the provisions regarding human rights itself [9].

However, all the provisions regarding human rights in the 1945 Constitution actually still leave debate, who actually has the obligation to fulfill the human rights of every person in the State of Indonesia, as the research question in the formulation of Article 28I paragraph (4) of the 1945 Constitution. The phrase "... the responsibility of the state, especially the government "shows that there are other subjects who are given the obligation to fulfill the human rights of every person in Indonesia, but who are the subjects in the Indonesian state referred to in Article 28I paragraph (4) and what is the scope of their responsibilities in fulfilling human rights, therefore it should be clarified, emphasized the formulation of norms in Article 28I paragraph (4) through amendments to the 1945 Constitution, by reinforcing the norms of legislative, judicial and executive subjects as intended by the drafters of the amendments to the 1945 Constitution, as described in the previous discussion in the treatise on discussing changes to human rights articles in the 1945 Constitution.

Meanwhile, the process of amending the 1945 Constitution can be taken through the stages specified in Article 37 of the 1945 Constitution. As the Bible knows, the 1945 Constitution is the basic rules or basic rules of the state (*staatsgrundgesetz*) which in the preamble contain *staatsfundamentalnorm* as the main idea of the birth of the basic rules or basic rules of the country [10]. The 1945 Constitution has a strategic function, one of which is as a basic source for the formation of laws and regulations. As a guide for the running of government as well as the laws and regulations under it, the 1945 Constitution can be perfected according to the needs of the state administration through a change mechanism. After the reformation, four amendments to the 1945 Constitution have been made in the period 1999-2002. However, it is possible to continue to make changes for improvement. In general, matters regarding amendments to the 1945 Constitution are regulated in Article 37 of the 1945 Constitution.

Based on this article, it can be seen that the first step in the process of amending the 1945 Constitution is the will of the majority of MPR members for the idea of amending the 1945 Constitution. In this case, proposed amendments to the 1945 Constitution can be scheduled in an MPR session if at least 1/3 of the MPR members submit proposals for amending the 1945 Constitution. However, it needs to be underlined that the changed material is excluded as follows, members of the MPR cannot propose changes to the Preamble of the 1945 Constitution and the form of the Unitary State of the Republic of

Indonesia. Proposals must be submitted in writing by clearly indicating the article proposed to be amended along with the reasons. This proposal is then submitted to the leadership of the MPR and will be reviewed by the ad hoc committee if the proposed amendment meets the requirements.

The requirements referred to in this case are the fulfillment of at least 1/3 of the members of the MPR as proposers and the articles proposed to be amended along with the reasons for the changes. Next, a Plenary Session of the MPR will be held which must be attended by at least 2/3 of the total MPR members. If the proposal is not approved at the MPR Plenary Session, the proposal cannot be submitted again during the same MPR membership period. On the other hand, a decision to amend articles of the 1945 Constitution in the MPR Plenary Session can be made with the approval of at least 50% plus one member from all MPR members.

3.3 Clarity on Subject Norms and Scope of Responsibilities in Fulfilling Human Rights in the Executive, Legislature and Judiciary through Changes to Sectoral Laws

The 1945 Constitution has provided recognition and guarantees for human rights. The fundamental question raised: how to provide guarantees so that these rights are not violated? This question is important because human rights that are protected constitutionally through the 1945 Constitution can be violated for certain reasons and interests, especially related to the short-term political interests of legislators. Regarding this concern, Jeremy Waldron in *The Dignity of Legislation* emphasized that legislation and legislatures have a bad name in legal and political philosophy, a name sufficiently disreputable to cast doubt on their credentials as a respectable source of law. Particularly with regard to violations in the form of negligence, various regulations and policies issued by the state have a big role in this. Legislation made both by the primary legislator, in the case of the DPR and the government (in the form of laws), secondary legislators are not always sensitive to human rights. Sometimes policies are issued arbitrarily, so there is a potential for human rights violations to occur. Regarding possible violations through policies or regulations, the 1945 Constitution provides space for every citizen who feels his rights have been violated to challenge them through a judicial review to the Supreme Court or the Constitutional Court.

In the 1945 Constitution the opportunity to apply for a judicial review is regulated in Article 24C Paragraph (1) and Article 24A paragraph (1). Each of the provisions reads as follows: "Article 24C paragraph (1) of the 1945 Constitution: The Constitutional Court has the authority to try at the first and final levels whose decisions are final to review laws against the Constitution, to decide disputes over the authority of state institutions whose powers are granted by Law Constitution, decide the dissolution of political parties, and decide disputes about the results of general elections. Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia The Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under the law against the law, and has other powers granted by law." The Constitutional Court (MK) and the Supreme Court (MA) have the right or authority to conduct judicial review of statutory regulations. In this case, the right to examine materially is an authority to investigate and then assess whether a statutory regulation is in accordance with or contradicts a higher degree regulation, and whether a certain power (*verordenende macht*) has the right to issue a certain regulation.

It is believed that the judicial review mechanism will be able to maintain a balance in the implementation of checks and balances between branches of state power. In addition,

judicial review raises the prudential principle (caution) for legislators when discussing draft laws. This is because the right of judicial review granted to the Constitutional Court functions to control the powers of the legislature, the President and the DPD. In addition, what is far more important is to ensure that statutory regulations do not deviate from the 1945 Constitution or so that the constitutional rights of citizens guaranteed by the 1945 Constitution are protected. The formation of the Constitutional Court is in line with the adherence to the rule of law ideology in the 1945 Constitution. In a rule of law there must be an understanding of constitutionalism, in which there may not be laws and other statutory regulations that conflict with the Constitution. 46 To ensure that there are no laws which is contrary to the Constitution, then one of the ways taken is to give the authority or right of judicial review to the judiciary power institution. If citizens, both individuals and communities or legal entities, feel or think that their constitutional rights have been impaired as a result of the enactment of a law, they can submit a review of the relevant law to the Constitutional Court.

Specifically for individual citizens and customary law community units, the judicial review mechanism is also aimed at ensuring the protection of human rights guaranteed by the 1945 Constitution. Several decisions of the Constitutional Court can be used as evidence to assess that the judicial review conducted by the Constitutional Court is to protect and advance human rights, including: (1) Decision No. 011-017/PUU-VIII/2003 concerning the review of Law No. 12/2003 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council; (2) Decision No. 6-13-20/PUU-VIII/2010 concerning the review of Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia; (3) Decision No. 55/PUU-VIII/2010 regarding the review of Law Number 18 of 2004 concerning Plantations; (4) Decision No. 27/PUU-IX/2011 concerning the review of Law No. 13 of 2003 concerning Manpower. First, the right to self-development, the right to recognition and assurance of legal certainty, the right to get equal opportunities in government and the right to be free from discriminatory treatment are human rights that are guaranteed and protected through Article 28C paragraph (2), Article 28D paragraph (1), Article 28D Paragraph (3), and Article 28 I Paragraph (2) of the 1945 Constitution. Meanwhile, through the provisions of Article 60 letter g of Law No. 12 of 2003, which contains a prohibition on becoming a member of the DPR, DPD, Provincial DPRD, Regency or City DPRD for those who are "former members of the banned organization of the Indonesian Communist Party, including its mass organizations, or are not people directly or indirectly involved in G.30.S/PKI or other banned organizations, human rights guaranteed by the 1945 Constitution in above is violated [11].

Here, the Constitutional Court's decision states that acts of discrimination based on differences in religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs are not justified. In the civil and political realm, the constitutional rights of citizens to vote and be elected (right to vote and right to be candidates) are rights guaranteed by the constitution, laws and international conventions, so restrictions on irregularities, abolition and elimination of these rights are violations. of the human rights of citizens. On the basis of these considerations, the Constitutional Court declared Article 60 letter g of Law Number 12 of 2003 contrary to the 1945 Constitution. Based on this decision, the rights of citizens who were labeled as having been directly or indirectly involved in G.30.S/PKI have been restored . The Constitutional Court's decision is seen as a new milestone in Indonesian history which may have broad implications for the

future of democracy in Indonesia. Not only that, according to Todung Mulya Lubis, one of the important things about this decision was that the Constitutional Court succeeded in getting out of political considerations by using arguments and explanations of human rights articles contained in domestic and international standards and norms. Second, the right to associate and assemble, express thoughts orally and in writing, the right to recognition and guarantees of legal certainty, the right to own private property, the right to communicate and obtain information for personal development are rights that are recognized and guaranteed in Article 28E paragraph (3), Article 28D paragraph (1), Article 28 H paragraph (4) and Article 28 F of the 1945 Constitution. Meanwhile, Article 30 Paragraph (3) letter c of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia. [12]

On the basis of this provision, authorized officials are given the authority to predict something as potentially disturbing to the public and/or potentially disturbing public peace and order. Thus, the Attorney General's Office as an institution given the authority has also banned the publication of *The Six Paths to God*. The authority to ban the circulation of books as a preventive step tends to be only predictive and even predictive, because it does not have objective parameters as signs so that this authority does not conflict with the basic law in the 1945 Constitution. Predictions predicting unrest can arise in society as a result of the circulation of these books. , does not necessarily become a justification for harming citizens' constitutional rights. So that this form of authority creates arbitrariness and violations of human rights rules [13].

In its considerations, the Constitutional Court considered that banning the circulation of books as a source of information, confiscation without a trial process, is an act that is not in line with and even contradicts Article 28F of the 1945 Constitution. through due process of law, clearly not included in the definition of restriction of freedom as referred to in Article 28J Paragraph (2) of the 1945 Constitution. According to the Constitutional Court, supervision of the circulation of printed materials can be carried out by the Attorney through investigations, investigations, confiscations, searches, prosecutions, and trials in accordance with the due process of law, which culminates in a court decision that obtains permanent legal force which is then executed by the prosecutor's office. On the basis of these considerations, the Constitutional Court stated that Article 30 paragraph (3) letter c of Law No. 16/2004 concerning the Attorney General's Office of the Republic of Indonesia was contrary to the 1945 Constitution. Based on this decision, a person's right to freely express thoughts orally and in writing as well as the right to communicate and obtain information for personal development as guaranteed by the 1945 Constitution has been safeguarded and protected from the arbitrary exercise of state power.

Third, the right to recognition and guarantees for legal certainty, the right to self-development in order to meet the necessities of life is guaranteed and protected by instruments Article 28D Paragraph (1) and Article 28 G Paragraph (1) of the 1945 Constitution. From the constitutional guarantee referred to, everyone has the right to develop themselves to meet their needs. Therefore, there is no justification for limiting this right. Meanwhile, Article 21 and Article 47 Paragraphs (1) and (2) of Law No. 18/2004 concerning Plantations are considered to have broad formulations and have limited human rights to self-development, in order to fulfill basic needs as human beings. In its considerations, the Constitutional Court considered that the formulation of Article 21 followed by Article 47 of the Plantations Law was very broad and unlimited. The formulation in the article is unclear and creates uncertainty about legal norms that have the potential to violate citizens'

constitutional rights. Considering the above, the Constitutional Court stated that Article 21 and its explanation and Article 47 Paragraphs (1) and (2) of Law No. 18 of 2004 concerning Plantations were contrary to the 1945 Constitution and did not have binding legal force. Fourth, the 1945 Constitution guarantees that everyone has the right to work and receive fair and proper compensation and treatment in a work relationship. This is in accordance with the provisions of Article 28D Paragraph (2) of the 1945 Constitution. In addition, Article 27 Paragraph (2) of the 1945 Constitution also strengthens the existence of this right. While in practice, the Government and the DPR actually issued Law Number 13 of 2003 concerning Manpower, in which several provisions of the said Law were deemed to have violated constitutional rights contained in Article 28 D paragraph (2) of the 1945 Constitution.

The provisions referred to are: Article 29 Paragraph (1), (2), (3), (4), (5), (6), (7), and (8); Article 64; Article 65 Paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9); Article 66 Paragraph (1), (2), (3) and (4). In essence, these provisions regulate the outsourcing system. This system uses a Fixed Time Work Agreement. A Fixed Time Work Agreement clearly does not guarantee job security, there is no continuity of work because a worker with a Specific Time Work Agreement certainly knows that at one point the employment relationship will end and will no longer work there, as a result the worker will look for another job. So that the continuity of work is a problem for workers who are outsourced with a Fixed Time Work Agreement. In this application, the Constitutional Court is of the opinion that these provisions result in the threat of the rights of everyone and the rights of workers guaranteed by the constitution. For this reason, the Constitutional Court decided that the phrase "... work agreement for a certain time" in Article 65 Paragraph (7) and the phrase "... work agreement for a certain time" in Article 66 Paragraph (2) letter b Law No. 13 of 2003 concerning Manpower as long as The work agreement does not require the transfer of protection of rights for workers/laborers whose work objects remain [14], even though there has been a change in companies that carry out part of the piece work from other companies or companies that provide workers/labourers services. The judicial review cases above are clear examples where in the process of making a law, the makers are not free from mistakes. It could be that the error was due to something intentional on the basis of certain interests or it could be that the intended error was the negligence of the legislator. Ideally, mistakes that result in violations of human rights should not have happened. But the practice that occurs proves that these mistakes occur a lot. Because of that it is important to have a judicial review mechanism implemented by the Constitutional Court. In addition, from the examples above, it can be seen that the Constitutional Court does not only act as an institution to guard the constitution, but also as an institution to guard the upholding of human rights. Through its judicial review authority, the Constitutional Court appears as a law enforcement agency that oversees the operation of state power so that it is not trapped in acts that are carried out arbitrarily and violate human rights rules.

However, the provisions of the norms in the legislative, judicial and executive laws (UU HAM) do not specifically assign responsibility for fulfilling human rights to each of these institutions. Therefore according to the intent of Article 28I paragraph (4) of the 1945 Constitution, where the Act has the authority to regulate matters further than the intent of the 1945 Constitution as stipulated in Law Number 12 of 2011 concerning the formation of statutory regulations [15], laws should Sectoral changes were made to add and clarify the norms of legislative, judicial and executive responsibilities in fulfilling human rights in Indonesia.

More detailed arrangements on sectoral laws are also possible based on the provisions of Article 28I paragraph (5) of the 1945 Constitution. Meanwhile, the process of amending sectoral laws for affirmation as subjects who are responsible for fulfilling human rights, can be carried out through the following stages, Changes to laws - law in its process or the procedure for amending it is the same as the procedure for forming a law. Meanwhile, statutory regulations are written regulations that contain generally binding legal norms and are formed or determined by state institutions or authorized officials through procedures stipulated in statutory regulations. invitation. The legislative system in Indonesia is known only by one type of law, namely decisions made by the People's Representative Council (DPR), with the approval of the President, and ratified by the President. In addition, there are no laws formed by other institutions. In another sense, laws are made by the DPR [16]. In the process of forming laws, there is a transformation of the vision, mission and values desired by the legislature and the community in the form of legal rules [17]. In conclusion, the DPR as a legislative institution or legislator has been demanded from the start of the planning process so that the laws produced can meet the needs of all people in Indonesia. The process of forming a law is not short, it even takes quite a long time. To form a law, there are 5 (five) stages, namely planning, drafting, discussing, ratifying, and enacting.

4. Conclusions

The lack of clarity regarding the regulation of responsible subjects and the scope of their responsibilities in fulfilling human rights, including the social security rights of Indonesian citizens in the 1945 Constitution, results in the absence of legal protection for Indonesian people, especially in relation to human rights, due to the absence of clear rules governing the regulation of responsibilities for the fulfillment of human rights. human rights including social security rights in the 1945 Constitution, regarding who the subjects are responsible for and the scope of their responsibilities in implementing social security in accordance with the 1945 Constitution. So there is a need for regulatory reform, namely by making clear and firm legal rules to regulate the responsibility for fulfilling human rights human rights including the scope of fulfillment of these human rights, parties who have responsibility, as well as the scope of responsibility in implementing social functions in the provisions of the 1945 Constitution.

The community plays an important role in the reformulation of these regulations, namely by providing clear aspirations related to human rights and their fulfillment to the government to be used as a reference in forming a new regulation that regulates the regulation of the responsibility for fulfilling human rights including social security rights in the 1945 Constitution. In addition In addition, the president and the House of Representatives are also required to establish new legal rules regarding human rights as clear and firm legal rules to regulate the responsibilities for fulfilling human rights, including the scope of fulfilling these human rights, parties who have responsibilities, and the scope of responsibilities. in the implementation of social functions in the provisions of the 1945 Constitution.

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