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## Human Rights Violations In The Agrarian Sector In The Perspective Of National Law And International Law (Case Study Of Rempang Island)

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**Abstract.** *Human Rights are a set of rights that are essentially inherent in humans. This right is natural, cannot be contested or taken away, and applies universally. Violations of human rights occur if these rights are taken away or challenged by other parties. The field of human rights violations is very broad, covering various rights possessed by humans, including in this case regarding land in the agrarian sector. Violations of human rights in the agrarian sector are basically similar to violations of human rights in other fields, the difference being the object of the right that gives rise to the human rights violation. In this case, the object in question is land in the agrarian sector. Indonesian national law and international law have slightly different perspectives regarding human rights violations in the agrarian sector. The difference is regarding control over the agrarian sector. National law has independent rights over the agrarian sector within its territory without interference from other parties outside the country, including international law. However, this form of violation of human rights, even in the agrarian sector, remains the subject of international law, as is the universal principle held by human rights law. To provide protection of rights in the agrarian sector, Indonesian national law applies the provisions of the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations. Meanwhile, international law applies Convention Number 169 of the International Labor Organization (ILO), as well as the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP). Therefore, this writing aims to explain the point of view of how Indonesian national law views human rights violations in the agrarian sector through domestic regulations, as well as how international law through international instruments views human rights violations in the agrarian sector. This writing was also prepared based on normative juridical sources through Indonesian national regulations and related to international instruments. Human Rights are a set of rights that are essentially inherent in humans. This right is natural, cannot be contested or taken away, and applies universally. Violations of human rights occur if these rights are taken away or challenged by other parties. The field of human rights violations is very broad, covering various rights possessed by humans, including in this case regarding land in the agrarian sector. Violations of human rights in the agrarian sector are basically similar to violations of human rights in other fields, the difference being the object of the right that gives rise to the human rights violation. In this case, the object in question is land in the agrarian sector. Indonesian national law and international law have slightly different perspectives regarding human rights violations in the agrarian sector. The difference is regarding control over the agrarian sector. National law has independent rights over the agrarian sector within its territory without interference from other parties outside the country, including international law. However, this form of violation of human rights, even in the agrarian sector, remains the subject of international law, as is the universal principle held by human rights law. To provide protection of rights in the agrarian sector, Indonesian national law applies the provisions of the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and*

*Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations. Meanwhile, international law applies Convention Number 169 of the International Labor Organization (ILO), as well as the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP). Therefore, this writing aims to explain the point of view of how Indonesian national law views human rights violations in the agrarian sector through domestic regulations, as well as how international law through international instruments views human rights violations in the agrarian sector. This writing was also prepared based on normative juridical sources through Indonesian national regulations and related to international instruments.*

**Keywords:** *Violations, Human Rights, Agrarian, Indonesian National Law, International Law*

## INTRODUCTION

Human rights are basic rights that are natural in the modern legal system. Human rights are the basis on which humans as social beings have individual rights that must be respected and appreciated by other humans including the state. The main characteristic of human rights is that they do not harm others. The form of human rights is very broad, depending on the interests of each individual or group of humans as social beings. These rights include the right to have a decent life, ownership of a legal object, and various other human life support rights that do not harm any party.

From a legal perspective, human rights are a form of natural law, which is intended to understand that humans have power over their own interests. Nowadays, the issue of human rights is the most vulnerable and most discussed issue, because it is about the rights of individuals and groups of people who are not fulfilled and imposed their will. In this case, one of the human rights issues is in the agrarian sector, especially regarding community land ownership whose rights are taken by force by the state.

As a state of law as contained in Article 1 Paragraph (3) of the 1945 Constitution, Indonesia highly upholds human rights, this is also contained in several Articles in it, especially in Article 28H Paragraph (4) which basically states that everyone has the right to have private property rights and these rights cannot be contested by anyone. In this case, a person or group of people has the right to the ownership they obtain, including in the agrarian sector.

Meanwhile, in international law, agrarian-related conventions, especially related to land ownership, are contained in International Convention No. 169 concerning land position issued by the International Labor Organization (ILO). This convention emphasizes justice for the community, especially indigenous peoples in every country, to be respected and given ownership rights including land ownership for indigenous peoples. This convention also emphasizes human rights, especially in the field of land.

Human rights violations in the agrarian sector are one of the problems that often occur, especially related to land ownership. The conflict between the state and the landowning community is actually not much different from the colonialism period because this control causes losses to those entitled to the land. One of the reasons why this is considered a form of discrimination and violates human rights is because it does not respect and impose the rights of a person or group of people over what they own. Many of these cases are in the name of development. Landowners are considered not to comply with and contribute to the public interest, but sadly the rights of landowners are not considered, either in the form of buying and selling, transferring assets, and so on which are detrimental to landowners. Throughout 2022 alone, the National Commission on Human Rights (Komnas HAM) noted that conflicts in the agrarian sector contributed the most cases of human rights violations. The state often overlooks the perspective of human rights in its development policies and one of the issues is land grabbing by the state (Kompas. 2022).

Meanwhile, international law addresses this matter based on human rights violations, because in each country the agrarian provisions are regulated individually, as well as the universal principles embraced in human rights themselves (Sabila, et al. 2019). The principle of international law that cannot intervene in a country's domestic affairs causes this agrarian issue not to be an issue that needs to be taken seriously by the international community but only covers issues regarding human rights.

Therefore, this paper focuses on how human rights violations in the agrarian sector are seen from the perspective of national and international law by referring to legal documents as well as legal research or other scientific works on law including legislation and international convention documents related to the issues discussed. This paper also aims to find out how human rights violations in the agrarian sector in the perspective of national and international law and the provisions that apply to the issue of human rights violations in the agrarian sector.

## LITERATURE REVIEW

The literature review represents the theoretical core of an article. In this section, we will discuss the purpose of a literature review. We will also consider how one should go about to find appropriate literature on which to base a literature review and how this information should be managed. Finally, we will answer four questions that first-time researchers often battle with when compiling a literature review.

These questions are: which aspects should I include in a literature review?; how should I go about synthesizing information in a literature review?; how should I structure a literature review? what writing style should I use when compiling a literature review?

The purpose of a literature review is to "look again" (re + view) at what other researchers have done regarding a specific topic (Leedy & Ormrod 2005:70). A literature review is a means to an end, namely to provide background to and serve as motivation for the objectives and hypotheses that guide your own research (Perry et al. 2003:660)

A good literature review does not merely summarise relevant previous research. In the literature review, the researcher critically evaluates, re-organizes and synthesizes the work of others (Leedy & Ormrod, 2005:84). In a sense, compiling a literature review is like making a smoothie or fruit shake: The end product is a condensed mix that differs totally in appearance from the individual ingredients used as inputs. The key to a successful literature review lies in your ability to "digest" information from different sources, critically evaluate it and present your conclusions in a concise, logical and reader-friendly" manner.

First-time researchers often naively believe everything they read or are scared to criticize the work of others. However, academic research is all about critical inquiry! It is, therefore, extremely important that you critically evaluate the material that you read. Do you agree with the arguments and conclusions of other researchers? If you disagree, why? Can you identify contradictory arguments or findings? How could one explain these contradictions? Do the findings of previous studies apply in all contexts or are the findings context-specific? What are the criticisms against the conceptual models or measurement approaches discussed in the literature? Which limitations should be considered when interpreting the results of previous research?

You have to carefully read the most recent available literature to identify specific gaps, inconsistencies and/or controversies that may form the basis of your own research. Always show that you have considered an issue from several angles and that you are aware of the arguments for and against a specific point of view. Many researchers in services marketing, for example, use the SERVQUAL measurement scale without considering existing criticisms against it.

To compile a proper literature review, one has to overcome three specific challenges, namely: finding appropriate literature on a specific topic, managing the information, and presenting a

logical, synthesized, and reader-friendly review of the current knowledge relating to a specific topic.

## **METHODS**

This research uses the Normative Juridical research method. Namely a research method that uses legal research to analyze and understand existing legal regulations (Wendra, Sutrisno. 2023). This method focuses on the study of normative legal materials, such as laws, regulations, court decisions, legal documents, and various other legal literature. Similarly, in writing this journal, the author uses legal documents and legal literature as a source of study material in making this journal such as legal journals, articles, and related news discussed (Sutrisno. 2024).

## **RESULTS**

Agrarian politics in Indonesia is inseparably linked to the establishment of Law No. 5/1960 on Agrarian Principles (UUPA). The regulation gives the state very broad powers over agrarian resources with the concept of "Right to Control by the State", initially this concept was used to abolish the concept of "domain verklaring" which was previously applied during the Dutch colonial rule. This concept was applied to 'seize' land controlled by indigenous peoples. Thus, the concept of "Right of Control by the State" is not much different from the concept of "domain verklaring" during the colonial period (Zakie. 2016). This reflects how the state acted to 'replace' the position of the colonizers during the colonial period.

The existence of agrarian politics shows that land is indeed very important. Land is a very important agrarian resource as a source of production that is needed by humans, in addition, land is also increasingly narrowing due to the increasing number of human populations who increasingly need land (Sumardjono. 2008). It is this interest in land that causes various conflicts that lead to human rights violations.

Human rights violations in the agrarian sector in Indonesia are a complex issue and often occur. This agrarian conflict is one of the serious challenges in upholding human rights in Indonesia. A report from the National Commission on Human Rights (Komnas HAM) states that many cases of conflict in the agrarian sector certainly have an impact on the decline in the welfare of farmers and laborers due to reduced agricultural land and low wages. The causes of agrarian conflicts are often triggered by various factors, such as the granting of permits or rights or concessions by public officials, the use of violence, manipulation, and fraud in land acquisition, especially for development projects.

Many cases of human rights violations in the agrarian sector have occurred in Indonesia, such as the case of Rempang Island. The case started when there was a land acquisition project to build Rempang Eco City which is a business area development by the governing body of Batam city, Riau Islands. This issue was highlighted due to legal uncertainty over the land that the people of Rempang Island owned. The community rejects this development plan because they are concerned about the preservation of their ancestral heritage and their existence as indigenous peoples in their own land and the community considers that the land is their noble heritage even before the country's independence which should belong to the indigenous community as a whole (Fath & Fawwaz. 2024). This case is considered to be indicated as a violation of human rights in the agrarian sector. Reporting from *kompas.com* published in September 2023, there are at least several factors that indicate that this case is indicated to violate human rights, namely as follows (Kompas. 2023):

- a. Excessive use of force. Excessive use of force relates to circumstances where a person or authority uses a disproportionate or even unnecessary amount of force in a particular situation. This was evidenced by the actions of the police by firing unmeasured tear gas

which victimized children at SDN 24 and SMP 22. This is not in accordance with the principle of humanity embraced by human rights because human rights guarantee the right of people to live their lives safely without violence.

- b. Right to a decent place to live. The plan to relocate local residents has an impact on the survival of the ancient Malay village and has been rejected by residents. In this case, it violates the provisions as contained in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Principles, which basically states that customary law communities have the right to their land as long as the reality still exists and in this case is the ancient Malay village. In addition, it also violates the provisions of Article 18B Paragraph (2) of the 1945 Constitution on the recognition of customary law and indigenous peoples, and most importantly Article 1 Paragraph (2) which states that sovereignty is in the hands of the people.

## **DISCUSSION**

The regulations mentioned above are a form of regulation regarding human rights in the agrarian sector. However, it should be noted that human rights itself is a general form of respect for human rights in any field, there is no specificity regarding human rights as long as these rights are violated, human rights will apply to victims and sanctions in the name of human rights for the perpetrators. In general, human rights do not see from the point of view of any field but from the point of view of how an act violates human rights (Kurniawan. 2019).

Therefore, the conflict of human rights violations in the Indonesian Agrarian sector is a conflict that needs serious handling. The reason is that the number of cases of human rights violations in the agrarian sector has increased sharply in line with the development of development. Without serious handling, both human rights and development activities continue to run in place because they are hindered by protracted conflicts. Therefore, law enforcement in the national scope needs to be improved in order to achieve conflict resolution in this field and have an impact on reducing similar cases.

International law provides a different view from Indonesian national law regarding human rights violations in the agrarian sector. International law sees that everything that deprives human rights is a form of human rights violation. This means that it does not differentiate in what field the human rights violations occur. International law recognizes human rights violations in general, which means that everything that is contrary to human rights is a form of human rights violation.

In general, human rights violations in the agrarian sector are actions that directly or indirectly violate human rights related to land. International legal instruments against human rights violations in the agrarian sector, especially land, are only limited to the context in which an action is a form of human rights violation, while the agrarian sector itself is a domestic affair of a country. international instruments have the principle of non-intervention in the sovereignty of a country (Qc, Malcom. 2019). This principle indicates that international law cannot interfere in the sovereignty of a country, including in this case, related to the agrarian sector. The state regulates and manages its own sovereignty without intervention from any party. Therefore, the agrarian sector is not a matter for international instruments. However, it should be underlined that international instruments strongly emphasize human rights violations and this applies universally, including human rights violations in the agrarian sector.

International instruments such as the International Labor Organization (ILO) convention number 169 of 1989 provide views related to land rights for indigenous peoples. This convention also provides recognition that indigenous peoples have the right to land ownership in carrying out the order of indigenous peoples themselves for the sustainability of the lives of indigenous peoples and their human rights (Tumbel. 2020). Article 14 of convention number 169 of the ILO provides clarity regarding the land rights of indigenous peoples where this Article as a whole says that indigenous peoples have the right to own land and the state must recognize it, and the

government is required to ensure effective protection of property rights and control of the land by finding out that the land is indigenous land.

Another Article of the convention states that "National agrarian programs shall be put in place to ensure that the communities concerned are treated in the same manner as other sectors of the population" (Article 19 of ILO Convention 169). This means that the article gives power to the state in the agrarian field to regulate it separately but still pay attention to human rights elements such as not forcibly taking land belonging to indigenous peoples by the state. The article also indicates that the agrarian field is the power of the state not an intervention of international law, international law is limited to the implementation of human rights that occur only.

In addition, the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP), which was adopted in 2007, also affirms the rights of indigenous peoples to their lands and territories. As contained in Article 26 of this declaration document which essentially states that indigenous peoples have rights to the lands, territories and resources they own, indigenous peoples have the right to own, use, develop and control the lands, territories and resources they own, and the State provides legal recognition and protection of these lands, territories and resources. States are required to recognize the rights of indigenous peoples in line with respect for the customs or traditions and land tenure systems that apply to the indigenous peoples concerned. Once again, international instruments give power over the agrarian sector to the state, but the forms of human rights violations that occur remain a concern of international instruments as well. This is also further strengthened by the provisions of Article 27 of this declaration document, "States establish and implement a fair, independent, impartial, open and transparent process for recognizing indigenous peoples' laws, traditions, customs, land tenure systems, and recognizing indigenous peoples' rights to their lands, territories and other resources, including those traditionally owned. Indigenous peoples also have the right to participate in these processes."

In addition, human rights law is also a reference for a country in protecting its people. Therefore, international law provides a way for countries to manage their own domestic affairs, especially in the agrarian sector, but human rights violations committed by the state also remain an international concern.

## **CONCLUSION**

Land is a very important resource for human life. Land is very important because in addition to the resources contained in it, land is also very important for human life as a place where creatures live on it. For this reason, land has become one of the objects of struggle, which in turn has led to conflicts that have resulted in violations of human rights. Human rights law strongly emphasizes the existence of human rights violations. Human rights violations are conflicts both individually and in community groups that contain elements of taking the rights of other people or other parties forcibly and unjustly. This taking of rights can be in the form of coercion over an object including in the agrarian sector which is carried out by force or with things that are not proportional and unnecessary in certain situations. An example of human rights violations in the agrarian sector in Indonesia is the Rempang Island case. Indonesian national law sees human rights violations in the agrarian sector as something that must be enforced, as contained in the 1945 Constitution which contains many articles on human rights, Law Number 39 of 1999 concerning Human Rights, and Law Number 5 of 1960 concerning Basic Agrarian Principles. Meanwhile, international law views human rights violations in the agrarian sector as a violation of human rights in general, as long as the action is a form of human rights violation. International law does not regulate in certain areas such as in the agrarian sector but rather the authority of a state as a form of its sovereignty. Human rights violations in the field of agrarian law are stipulated in international instruments such as

Convention Number 169 of the International Labor Organization (ILO), as well as the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP).

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