

THE HUMAN RIGHTS IN INDONESIA AS SEEN THROUGH VARIOUS ASPECTS OF LEGAL AND CUSTOM LIFE

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Abstract

The purpose of this research is to analyze Human Rights in Indonesia from a Legal Perspective and a Customary Life Perspective. Based on Indonesian law and the way of life in each region, regional regulations are established to protect inhabitants' human rights. This research was carried out using normative methods with research through a literature study. As a guarantee of the notion of equality among all humans, HAM, or human rights, is a fundamental value that must be safeguarded and maintained. It is not just in Indonesia but anywhere else in the world. Right now, there is an imbalance between the respect for human rights and how those rights are put into practice. In spite of these circumstances, Indonesian conversation and debate are nonetheless highly fascinating. With regard to human rights, in particular. In order to examine human rights in relation to various legal and customary aspects of life in Indonesia, this research was conducted utilizing the literature review technique. The findings of this research describe the state of human rights in light of Indonesia's legislative and cultural traditions. The issue of indigenous peoples has indeed become one of the strongest issues in international development. Indigenous peoples are a community group that must receive attention in mitigation and adaptation efforts.

Keywords: Custom; Human; Law; Rights.

A. INTRODUCTION

The 1945 Constitution of the Unitary State of the Republic of Indonesia serves as the foundation for Indonesian law.¹ This foundation is one of the guides used by the government, particularly central and local governments, to administer and control their own governments in accordance with the principle of autonomy and to carry out activities that can help create local laws as well as other laws. To exercise the greatest amount of autonomy and to make it simple for local governments to raise the standard of living in each region, this has evolved into one of the regional government's powers.²

Human rights must, of course, be recognized and protected in the midst of society as part of the establishment of an autonomous system overseen by the regional administration.³ Local governments then take on the role of operators in observing and defending human rights for citizens in each region. Therefore, rules and regulations that are higher than regional regulations must be followed while creating and formulating regional government policies in the form of regional regulations or other policies.⁴

The 1945 Constitution serves as the framework for a nation that strictly upholds the fundamentals of human rights.⁵ What the central and local governments must do is outlined in the country's fundamental constitution. Therefore, regional governments are not permitted to create regional regulations that go against the ideals of human rights that are guaranteed by the 1945 Constitution as well as by United Nations regulations⁶.

The legal issues Indonesia faces are issues with legal harmonization. If the central and local governments do not understand what human rights are and if concerns about citizens' human rights are not taken seriously, steps to end poverty and to build a just and prosperous society will never be taken. To safeguard the human rights of actual citizens, central and regional governments must be able to address human rights issues holistically.⁷

According to research conducted by Bambang Heri Supriyanto with the title Law Enforcement Regarding Human Rights (HAM) According to Positive Law in Indonesia The application of the law to human rights

1 Siti Zahra Maulida, The Essence of Pancasila as the Foundation and Ideology of the State: The Values of Pancasila, *International Journal of Educational Narratives*, Vol. 1, No. 2, tahun 2023, page. 86-95

2 Liesbet Hooghe, Gary Marks, Arjan Schakel, *The Rise of Regional Authority A Comparative Study of 42 Democracies*, London, Routledge, 2010, page. 31

3 Abdul Rasyid Thalib, *Wewenang Mahkamah Konstitusi dan Implikasinya dalam Sistem Ketatanegaraan*, Bandung, Citra Adya Bhakti, 2006, page. 20

4 Mohamad Roky Huzaeni, Pelaksanaan Asas Keterbukaan Dalam Pembentukan Peraturan Daerah, *Jurnal Dialektika Hukum*, Vol. 3, No. 2, Tahun 2021, Page. 213-231

5 Muhammad Ashri, *Hak Asasi Manusia Filosofi, Teori dan Instrumen Dasar*, Makassar, Social Politic Genius, 2018, Page. 68

6 Chuasanga A., Ong Argo Victoria. Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol. 2, No. 1, 2019

7 Joane R. Baurer, *The East Asian Challenge for Human Rights*, Cambridge University Pers, Madrid, 1999, page. 300

violations in Indonesia is guided by Act No. 26 of 2000 concerning Human Rights courts, where in the Law it is mentioned about ad hoc courts used to try human rights violators in Indonesia. The institution that tries human rights violators is the Ad Hoc Human Rights Court, which is no different from ordinary courts, especially criminal courts.⁸ According to research conducted by Mikho Ardinata with the title State Responsibility To Health Insurance In The Perspective Of Human Rights In fulfilling the basic rights of citizens to health, government is bound by the responsibility to ensure adequate access for every citizen to decent and optimal health services and optimal health services. As an effort to respect, protect, and fulfill the obligations of the state by implementing human rights norms on the right to health.⁹ My research is more about analyzing Human Rights in Indonesia from a Legal Perspective and a Customary Life Perspective. Based on Indonesian law and the way of life in each region, regional regulations are made to protect the human rights of the population.

Based on Indonesian law and the way of life in each region, regional regulations are established to protect inhabitants' human rights. Based on Indonesian law and the way of life in each region, regional regulations are established to protect inhabitants' human rights. This is due to the diverse community life customs seen in each region. Additionally, because physical and societal characteristics vary by location, local governments must enact laws that can safeguard the lives of citizens in those areas. The local government can enhance the welfare of the people without putting a socioeconomic strain on them while also adhering to the 1945 Constitution's requirement that it implement the regional legal basis.¹⁰

B. RESEARCH METHODS

This research was carried out using normative methods with research through a literature study. The secondary data in this study includes primary legal materials that are closely related to human rights as well as legal materials in the form of literature and opinions from experts related to these human rights issues. The data obtained will be analyzed in a qualitative way, with an analysis based on quality, data, and also the value obtained during the research.¹¹ This research is based on the data obtained during the process.

8 Bambang Heri Supriyanto, Penegakan Hukum Mengenai Hak Asasi Manusia (HAM) Menurut Hukum Positif di Indonesia, *Jurnal Al Azhar Indonesia*, Vol. 2, No. 3, 2018, page. 151-169

9 Mikho Ardinata, Tanggung Jawab Negara Terhadap Jaminan Kesehatan Dalam Perspektif Hak Asasi Manusia, *Jurnal HAM*, Vol. 11, No. 2, August 2020, page. 319-332

10 Titon Slamet Kurnia, E-Government Dalam Penyelenggaraan Pemerintahan Daerah Di Indonesia, *Masalah - Masalah Hukum*, Vol. 46, No. 2, April 2017, page. 170-181

11 Hossein Nassaji, Good qualitative research, *Language Teaching Research*, Vol. 24, No. 4, 2020, page. 427-431

C. RESULTS AND DISCUSSION

1. Human Rights In Indonesia From A Legal Perspective

Indonesia has a legal basis that protects human rights in the 1945 Constitution. And the rights regulated in the 1945 Constitution as well as the Constitution are:

The right to life and also to defend their life, Human rights are understood as Natural Rights that are inherently inherent in human beings that are universal and lasting. Therefore, they must be protected, respected, defended, and may not be ignored, reduced, or deprived by anyone.

The right to build a family and also to continue offspring by carrying out a marriage that is legal according to religion and state, This right includes freedom to profess or accept a religion or belief of one's own choosing and freedom either individually or in community with others and either in public or private to manifest one's religion or belief in worship, observance, practice and teaching.

The right of children to survive, to grow, and to also develop As well as having the right to protection from acts of discrimination and violence. Every child has the right to be able to live, grow, develop, and participate reasonably in accordance with the dignity of humanity, and to receive protection from violence and discrimination.¹²

The right to self-development by fulfilling basic needs and obtaining the right to education, the benefits of science and technology, as well as arts and culture. It is the basis for the fulfillment of the right to obtain the benefits of science and technology, art, and culture.¹³

The right to improve the quality of life and the welfare of society, which aims to improve community welfare and sustainability.

The right to develop and promote themselves in fighting for their rights collectively in the development of the nation, the state, and its people. Everyone has the right to advance himself in fighting for his rights collectively to build his community, nation, and country.¹⁴

The right to get guarantees of protection, fair legal certainty, and equal treatment in the law. Every person is recognized as a human person, and is therefore entitled to equal treatment and protection in accordance with human dignity.¹⁵

The right to work and get compensation and fair treatment in the work relationship. Everyone has the right to work and to be rewarded and treated fairly and appropriately in labor relations.¹⁶

12 Amanda Tikha Santriati, Perlindungan Hak Pendidikan Anak Terlantar Menurut Undang Undang Perlindungan Anak, *El Wahdah*, Vol. 1, No. 1, 2020, page. 1-13

13 Lukman Hakim, Pemerataan Akses Pendidikan Bagi Rakyat Sesuai Dengan Amanat Undang-Undang Nomor 20 Tahun 2003 Tentang Sistem Pendidikan Nasional, *Edu Tech Jurnal Pendidikan dan Ilmu Sosial*, Vol. 2, No. 1, 2016, page. 53-64

14 Muchamad Ali Safaat, Pola Penafsiran Konstitusi dalam Putusan Mahkamah Konstitusi Periode 2003-2008 dan 2009-2013, *Jurnal Konstitusi*, Vol. 14, No. 2, 2017, page. 234-261

15 *Ibid*

16 *Ibid*

The right to get a chance in government, participate in the government of their country directly or indirectly or through freely elected representatives freely elected representatives; Entitled to equal opportunity to be appointed in the government of their country.¹⁷

The right to freedom of religion and worship based on religious beliefs in accordance with the 1945 Constitution the right to choose religious teachings and education as well as a place to live in the territory of the country.

The right to believe in a belief and express attitudes and thoughts that are in accordance with one's conscience. Everyone has the right to freedom of belief, expression of thought and attitude, in accordance with his or her conscience.

The right to freedom of assembly and expression, everyone has the right to freedom of association, assembly and expression.

The right to communicate and obtain information in order to develop personal and social environments In addition, they have the right to obtain and convey information using the types of channels that exist in their environment.¹⁸

The right to get self-protection, honor, family, dignity, and property under his control Then they have the right to feel safe and protected from threats and fear.

The right to be free from torture, discriminatory treatment, and degrading human dignity. Everyone has the right to be free from torture and cruel, inhuman and degrading treatment.

The right to obtain political asylum from another country if you experience discrimination.¹⁹ A protection is based on humanitarian grounds, racial discrimination, politics, religion and so on. The granting of asylum is an attribute of the sovereignty of a state. In addition, international law clearly recognizes the granting of asylum with the existence of several international legal instruments that speak of the state's obligation to protect, respect and safeguard human rights not only to its citizens but also to foreign nationals with conditions that have been established under international law.

The right to live in prosperity and have a place to live and a good and healthy environment. The right to every people to live in physical and mental prosperity, to have a place to live, and to have a good and healthy environment get a good and healthy living environment and have the right to obtain health services.²⁰

17 *Ibid*

18 Dudih Sutrisman, *Pendidikan Politik, Persepsi, Kepemimpinan, Dan Mahasiswa*, Guepedia Publisher, Bogor, 2019, Page. 5

19 Paul May, The Letter and Spirit of the Law: Barriers to Healthcare Access for Asylum Seekers in France, *Journal of International Migration and Integration*, Vol 2 No. 2, March 2021, Page. 1383-1401

20 Peggy Edwards, Agis Tsouros, *Promoting Physical Activity and Active Living in Urban Environments: The Role of Local Governments*, World Health Organization, Printed in Turkey, 2006, Page. 5

The right to obtain facilities and special treatment in obtaining equal opportunities and benefits in achieving justice. The right to justice is a human right to ensure the respect, protection, and fulfillment of the rights of every person before the law.

The right to get social security that gives them the possibility to develop themselves. The right to social security that enabling the development of himself fully as a human being with dignity

The right to private property may not be taken arbitrarily by any party. Every person has the right to private property and such property shall not be taken over arbitrarily by any person.

The right to get protection from discriminatory treatment. Everyone has the right to be free from discriminatory treatment on any grounds whatsoever and to protection against such discriminatory treatment.

These are constitutional rights guaranteed by the government to the people in terms of human rights. And all administrators in this state have the obligation to implement the constitutional provisions of the government. Fulfillment of human rights itself is regulated in more detail in Act No. 39 of 1999 concerning Human Rights, which contains several rights consisting of, The right to maintain life and also increase the level of welfare in their lives in accordance with the provisions of the law, The right to fulfill basic needs so that they can grow and develop properly in accordance with the regulations and the state constitution, The right to fight for personal and collective rights that have the goal of developing the nation and state as well as community development, The right to freely move and reside within the jurisdiction of the Republic of Indonesia, The right to protection of self and family, as well as dignity and rights to private property, The right to feel safe and secure and to get protection from all kinds of threats that can cause harm, The right to be self-owned or jointly owned, which aims to develop themselves and their families as well as the nation and society, The right to be free to have a job and The right to a decent life.²¹

It is in the law that the government upholds and also recognizes human rights and the basic freedoms of society or citizens, which are naturally inherent and cannot be separated from human beings. And this must be respected, protected, and upheld for the sake of increasing human dignity as well as justice and social welfare.

The Indonesian government has also established international human rights legal instruments that are used to strengthen national human rights law. International Human Rights Law is a set of international rules, norms, and principles to be made and agreed upon by the international community to be used as a general standard in achieving the rights and dignity of all human beings without

21 Tantimin, Elizabeth Sinukaban, Perlindungan Hukum Terhadap Hak Tenaga Kerja Perempuan Terkait Ketidaksetaraan Gender Di Indonesia, *Nusantara Jurnal Ilmu Pengetahuan Sosial*, Vol. 8, No. 3, 2021, page. 395-406

discrimination.²² This happened in 2005, when Indonesia ratified the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The two laws are contained in Act No. 11 of 2005 and Act No. 12 of 2005.

Indonesia has previously ratified four international human rights instruments, which consist of:

Indonesia has ratified the Convention Against Torture (CAT) through Act No. 5 of 1998 Concerning the Ratification of the Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment;

Law Number 29 of 1999 Concerning the Ratification of International Convention On The Elimination of All Forms of Racial Discrimination, 1965. The convention is basically not contradictory to Pancasila, the 1945 Constitution, and the Laws and Regulations of the Republic of Indonesia and is in line with the Indonesian nation's desire to continuously uphold and promote the implementation of human rights in the life of the nation and state.

Indonesian Act No. 7/1984 on the Ratification of the UN Convention on the Elimination of all Forms of Discrimination against Women (abbreviated as the Women's Convention). With the ratification of the Women's Convention, all forms of discrimination based on gender differences (male - female) must be removed. For example, the treatment of paying female workers below the wages of male workers must be removed, as well as the world of politics is not the property of men, so women must be given the same opportunity to occupy positions in political parties and government. Thus there is a difference in respect for men and women, not because of their gender but because of differences in achievement.

International Convention on Human Rights of the Child in Presidential Decree No. 36 of 1990, The Convention on the Rights of the Child has now been ratified by many UN member states. As of February 1996 this convention has been ratified by 187 (one hundred and eighty-seven) countries.

The ratification process has made Indonesia recognize that the norms and human rights contained in this international law are bound into national laws stipulated by the central government. The Indonesian government has an obligation to carry out these provisions contained in international human rights law, which also recognizes the rights contained in instruments that are owned by all people.²³

22 Cekli Setya Pratiwi, Critiques on Contemporary Discourse of International Human Rights Law: a Global South Perspective, *Human Rights in the Global South*, Vol. 1, No. 1, July 2022, page. 1-12

23 Intan Pelangi, Perlindungan Terhadap Para Pencari Suaka Berdasarkan Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, *PJIH*, Vol. 4, No. 1, 2017, page. 143-161

In human rights law, the central government has a position as executor of obligations where it will be supervised by the state,²⁴ which consists of three forms consisting of: Respect This obligation is the state's obligation to refrain from carrying out various kinds of interventions that come through legal channels. The government can only intervene in accordance with the law. As in the general election conditions; Fulfill This is an obligation of the state that aims to take legislative, administrative, executive, judicial, and practical steps aimed at guaranteeing the implementation of human rights. And of course, the community gets top priority in this regard; Protect, The obligation to protect rights is an obligation of the government and does not only apply to violations but also to actions and violations committed by other parties that could interfere with the protection of these rights.

The state has an obligation to respect, which is a basic obligation. In relation to economic, social, and cultural rights, the state's obligation is to respect individual resources. Meanwhile, a significant part of the state's obligation is to protect and guarantee human rights in the legal system of a country. Meanwhile, the obligation to comply according to the constitution relating to the economy, social, and cultural aspects is the obligation to provide facilities, as well as facilities in the direct supply system.

The government has Act No. 39 of 1999, which states human rights provisions. Article 1 mentions the definition of human rights and the state's obligations to human rights. The government emphasizes the protection and fulfillment of human rights as stated in Article 8 of Act No. 39 of 1999 concerning Human Rights, which is the legal umbrella for all laws and regulations related to human rights.²⁵

The parameters used in the formation of a legal basis regarding human rights in this regional regulation are contained in Joint Regulations of the Minister of Law and Human Rights and the Minister of Home Affairs Nos. 20 and 77 of 2012, which mention the parameters of human rights in the formation of regional legal products. It is hoped that this regulation will serve as a guide for regional legislators so that the legal product does not conflict with the principles of human rights.

The ministerial regulation has four articles with the substance of human rights parameters, which become the legal basis for regional governments. There are two parameters, namely general and special parameters. For the general parameter itself, the formation of the legal basis and regional regulations is a way to pay attention to the principles of gender equality, non-discrimination, and the division of government affairs.

24 Vicki Dwi Purnomo, Polemic on Human Rights Case is Still Rolling in Indonesia, *International Journal of Middle Eastern Research*, Vol. 1, No. 1, 1999, page. 1-9

25 Muladi. *Demokratisasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, Jakarta, The Habibie Center, 2002, page. 76

This aspect has a foundation based on Government Regulation No. 38 of 2007, which regulates the distribution of governmental affairs between the Central and Regional Governments, consisting of provincial, district, or city governments. The parameters of human rights are attached to the joint ministerial regulation based on PP N. 38 of 2007.

Although government regulations aim to support human rights, there are several issues regarding the legal basis, especially regional regulations, that are problematic and are suspected of violating human rights. And basically, this is a problem quite serious. There were thousands of regional regulations between 2002 and 2009 that were considered to have violated human rights. And in 2011 alone, there were around 351 problematic regional regulations. Practically, the central government has to cross out, delete, or not ratify the regional regulations because they are considered to violate human rights. So according to the constitutional regulations that are problematic, they will not be ratified.²⁶ It can even be tested through the Supreme Court's judicial review mechanism. And this has also been stated in Article 20, paragraph 2b, and paragraph 3 of Act No. 48 of 2009 regarding the judicial power.

This mechanism can be carried out by way of executive review or legislative review, where the mechanism is a review of the institution that determines the legal product. The right to test, or *toetsingrecht*, is given to the legislature that will carry out the testing process. And this process is called legislative review. Meanwhile, if the government conducts the test, it is also called an executive review.

The normative control as well as the testing system are carried out by the institution that makes the regulation and depend on the subject and object being tested. Regulations made by local governments must, of course, be based on human rights parameters regarding matters that must receive attention from the government in establishing a regional regulation. And there is a legal mechanism that must be carried out if human rights are violated or a regional regulation contradicts this aspect.²⁷

2. Human Rights In Indonesia From The Aspect Of Custom Life

Then how is the relationship between human rights and the customary life of the people in Indonesia? The government fully guarantees human rights to society or its citizens under the principle of popular sovereignty. And this people's sovereignty becomes the real condition of a pluralistic Indonesian society. The state recognizes the existence of indigenous peoples with the embodiment of juridical

26 Yunitasari, Analisis Kemampuan Indonesia Dalam Membuat Perjanjian Internasional Menurut Hukum Internasional (Studi Kasus Tidak Diratifikasinya Konvensi 1951 dan Protokol 1967), *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan*, Vol. 1, No. 2, 2019, page. 30-45

27 Pylypenko, Volodymyr, Human Rights Violations by War Crimes: Theory and Practice, *Pakistan Journal of Criminology*, Vol. 15, Issue. 2, 2023, page. 243-258.

recognition through MPR Decree No. XVII/MPR/1998, which states about human rights. The decree states that state institutions and government apparatus must respect, uphold, and also disseminate understanding of human rights to all Indonesians.²⁸

The rights of indigenous peoples are one of the human rights that exist in every individual so that they can get treatment and recognition from the state. In addition to getting an equal life in various national and state life, this makes these indigenous peoples have the same opportunities in self-development efforts with all components of society and as citizens.

And this juridical recognition of indigenous peoples is also contained in Article 6 of Act No. 39 of 1999 concerning Human Rights. In this article, it is stated that, in the context of upholding human rights, customary law must be protected and also considered by the community, the government, and the law itself. The cultural identity of these customary-law communities includes rights to land that are protected and in accordance with the times.

The issue of indigenous peoples has indeed become one of the strongest issues in international development. Indigenous peoples are a community group that must receive attention in mitigation and adaptation efforts. The status of indigenous peoples themselves can be assigned to individual groups as well as communities and nations. And not all of them can be applied easily in Indonesia, which acts as a country.²⁹

The context of human rights, in which states struggle using big criteria such as ethnicity and race, can obscure the way to get recognition of legal subjects in the Indonesian context.³⁰ This is because this category will find it difficult if faced with suffering, experience, and injustice from domination involving several individuals or communities from that category.

The government also stipulates laws and regulations related to the ownership of land rights and the protection of human rights. Regarding the Basic Agrarian Act No. 5 of 1960, it is indeed often a topic of conversation that continues to invite pros and cons regarding its existence related to the implementation of national development, especially in the land sector.

Groups that are pro-law see that there are deficiencies in substantive as well as conceptual and philosophical aspects that can side

28 Martin P Siringoringo, Pengaturan Dan Penerapan Jaminan Kebebasan Beragama Sebagai Hak Asasi Manusia Dalam Perspektif Uud 1945 Sebagai Hukum Dasar Negara, *Nommensen Journal of Legal Opinion*, Vol. 3, No. 1, page. 111-124

29 Rayno Dwi Adityo, Studi Normatif Legalitas Peran Tokoh Masyarakat Dalam Undang-Undang No. 7 Tahun 2012 Tentang Penanganan Konflik Sosial, *Mahkamah*, Vol. 2, No. 1, Juni 2017, page. 1-26

30 O. Mendy, The State and Prospect of Legislation Number 39 Year 1999 of Indonesia, *International Journal of Humanities, Management and Social Science*, Vol. 6, No. 1, Jun 2023, page. 13-22

with the community, especially in the environment and customary life. Although there are many pros and cons, the Basic Agrarian Law, or UUPA, has become one of the starting points of the reform process regarding agrarian law in Indonesia. This law is the fundamental basis of agrarian law in Indonesia, which relates to life in society in Indonesia.³¹

The right to ownership has characteristics that cannot be categorized as civil and political rights alone. Likewise with economic and social rights, which also cannot be categorized into these rights. This relates to the historical side of civil liberties, which has very strong economic implications. Therefore, the discussion is often related to ownership rights, which are socio-economic rights that are protected by individual economic interests.

The government stipulates laws and regulations by prioritizing the principles of human rights in accordance with the law and customary life in Indonesia. The application of these regulations must be in line with international declarations and conventions that have been proclaimed by an international institution, the United Nations.

D. CONCLUSION

The central and regional governments have the authority to enact laws and regulations as well as a legal basis that remains within the corridors of supporting human rights. The government's policy of establishing a legal basis that is in line with upholding human rights is one of the proofs that the human rights of the people are the main concern of the government. And human rights, which are referenced by the Indonesian government, are, of course, in line with the conditions of Indonesian society and also the customs of life that exist in this country. This certainly can reduce the possibility of conflict that could occur, and the government can anticipate it so that the process of development can run dynamically and smoothly and in accordance with the corridors of human rights that have been mutually agreed upon by the international community. The issue of indigenous peoples has indeed become one of the strongest issues in international development. Indigenous peoples are a community group that must receive attention in mitigation and adaptation efforts. The status of indigenous peoples themselves can be assigned to individual groups as well as communities and nations.

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31 Verlia Kristiani, Hukum Yang Berkeadilan Bagi Hak Ulayat Masyarakat Hukum Adat (Kajian Dan Implementasi), *ADIL Jurnal Hukum*, Vol. 11, No. 1, 2020, page. 143-164

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