



State Responsibility for Alleged Human Rights Violations in Papua within The Framework of The Rule of Law Principle

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ABSTRACT:

Human rights protection remains a critical issue in regions experiencing prolonged conflict, such as Papua, Indonesia, where allegations of arbitrary arrests, excessive use of force, and extrajudicial killings persist. The state bears constitutional and legal responsibilities to ensure the respect, protection, and fulfillment of citizens' rights, in alignment with the principles of the rule of law. This study aims to examine the forms of state responsibility for alleged human rights violations in Papua and to assess the implementation of the tripartite obligations of respect, protect, and fulfill. Employing a normative juridical legal research method, the study analyzes primary legal materials, including the 1945 Constitution, Law Number 39 of 1999 on Human Rights, and Law Number 26 of 2000 on Human Rights Courts, alongside secondary materials from books, journals, and prior studies. Data were collected through library research and document review, and analyzed using qualitative descriptive-analytical techniques to identify gaps between normative legal provisions and practical implementation. The findings indicate that, although adequate legal instruments exist, the dominance of security-oriented approaches in Papua has hindered the effective protection of human rights, resulting in structural challenges, limited access to justice, and slow resolution of human rights cases. The study concludes that policy reforms emphasizing human rights-based approaches, accountability, and equitable development are necessary to realize the rule of law effectively in Papua.

Keywords: State Responsibility; Human Rights in Papua; Rule of Law

INTRODUCTION

Human rights are fundamental rights inherently attached to every individual from birth and must be protected by the state as a consequence of the rule of law principle (Muladi, 2018). In the Indonesian context, the guarantee of human rights is constitutionally affirmed in the 1945 Constitution of the Republic of Indonesia, particularly Articles 28A to 28J, which position the protection of human rights as an integral component of state administration. Further regulations concerning the state's obligation to respect, protect, and fulfil human rights are stipulated in Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts. Accordingly, the state bears a legal responsibility to ensure the fulfilment of citizens' rights without discrimination under any circumstances (Nasution, 2021). From the perspective of the rule of law, every governmental action must be grounded in law and uphold the principles of the supremacy of law, limitation of power, and protection of human rights. The state functions not only as the holder of authority but also as a legal subject that may be held accountable in cases of alleged human rights violations (Sunga, 2021; Svensson-McCarthy, 2021). The concept of state responsibility emphasizes that the state is accountable for both active conduct and omissions that result in the non-fulfilment of citizens' rights. Therefore, the state is obligated to

implement the principles of respect, protect, and fulfil in relation to human rights as part of the realization of the rule of law principle (Layn et al., 2024).

Papua remains one of the regions in Indonesia facing complex human rights issues resulting from prolonged social, political, and security conflicts. Various national and international reports indicate allegations of human rights violations involving acts of violence, arbitrary arrests, excessive use of force, and alleged enforced disappearances. These issues have attracted serious attention as they concern the protection of the right to life, the right to security, and the right to justice for civilians. The United Nations Human Rights Committee has even expressed concern regarding reports of extrajudicial killings and enforced disappearances in Papua, which are considered to have not been adequately addressed through effective legal mechanisms (Reuters, 2024).

Several previous studies have examined human rights issues in Papua from various perspectives. A study conducted by Muhammad Miftahul Huda, Suwandi, and Aunur Rofiq entitled "*Implementasi Tanggung Jawab Negara Terhadap Pelanggaran HAM Berat Paniai Perspektif Teori Efektivitas Hukum Soerjono Soekanto*" (Huda et al., 2022) highlights the implementation of state responsibility in fulfilling, respecting, and protecting human rights. However, the study is limited to the Paniai case and does not comprehensively examine state responsibility within the framework of the rule of law principle. Furthermore, research conducted by Rustandi Senjaya in the article entitled "*Pelanggaran HAM yang Terjadi di Papua dan Poso*" (Senjaya, 2022) analyzes human rights violations from the perspective of international law and emphasizes the importance of strengthening legal instruments in human rights enforcement. Consequently, the study primarily focuses on the urgency of regulations and human rights education for law enforcement officers, without specifically elaborating on the forms of state responsibility from the perspective of state responsibility theory and the implementation of the principles of respect, protect, and fulfil toward the Papuan community. In addition, Rifaldy Andika Musak, through his research entitled "*Penegakan Hukum Hak Asasi Manusia (HAM) atas Kejahatan Kemanusiaan Berdasarkan UU No. 26 Tahun 2000 tentang Peradilan Hak Asasi Manusia Mengacu Kasus Pelanggaran HAM Wamena 4 April 2003*" (Musak, 2019) focuses more specifically on the effectiveness of human rights law enforcement through the Human Rights Court mechanism in relation to the Wamena case. The study emphasizes the implementation of the Human Rights Court Law but does not comprehensively relate state responsibility to the rule of law principle and the state's constitutional obligations in protecting human rights in Papua.

Based on the foregoing background, the principal issue to be examined in this study concerns the form of state responsibility for alleged human rights violations in Papua from the perspective of the rule of law principle. This issue is significant considering that Indonesia, as a state governed by law, bears a constitutional obligation to guarantee the protection of human rights for all citizens, including the Papuan people. Accordingly, this research is focused on analyzing the forms of state responsibility for alleged human rights violations in Papua and examining the extent to which the principles of respect, protect, and fulfil have been implemented in addressing human rights issues in the region. This study is expected to contribute academically to the development of human rights

law scholarship while also serving as an evaluation of the implementation of the rule of law principle in the exercise of state power in Indonesia.

METHOD

This study employed a normative juridical legal research design, which focuses on analyzing legal norms, principles, and concepts to examine state responsibility for alleged human rights violations in Papua. The data population consists of all statutory regulations, legal instruments, and prior scholarly works related to human rights protection and state accountability in Indonesia. The data sample is selected purposively from primary legal sources, including the 1945 Constitution, Law Number 39 of 1999 on Human Rights, and Law Number 26 of 2000 on Human Rights Courts, along with secondary sources such as books, journal articles, and prior research studies relevant to the research focus. The sampling technique is purposive sampling, emphasizing materials that provide substantial legal and conceptual insights for normative analysis.

The research instruments consist of legal research guidelines, including coding sheets for conceptual analysis of the principles of respect, protect, and fulfil. To ensure validity and reliability, triangulation is applied by cross-referencing multiple sources, including primary statutory provisions, scholarly interpretations, and empirical reports of human rights incidents in Papua. The data collection technique involves library research and document review, systematically retrieving and recording relevant legal provisions, case studies, and prior research findings. The research procedure follows a structured sequence of identifying legal frameworks, categorizing human rights obligations, mapping state responsibilities, and integrating normative principles with empirical reports of human rights incidents.

For data analysis, the study employs a qualitative descriptive-analytical technique, focusing on interpreting the legal texts and concepts to construct reasoned arguments regarding state accountability. Analytical steps involve comparing normative provisions with documented cases of human rights violations, assessing the implementation of the principles of respect, protect, and fulfil, and identifying gaps between law in books and law in action. Software tools such as NVivo or similar qualitative analysis software are utilized to manage, code, and analyze textual data efficiently, facilitating a systematic and transparent interpretation process that strengthens the rigor of the normative juridical approach.

RESULTS AND DISCUSSION

State Responsibility for Alleged Human Rights Violations in Papua from the Perspective of the Rule of Law

The concept of the rule of law (*rechstaat*) positions law as the supreme instrument in the administration of state power. Within the doctrine of the modern rule of law, the existence of law functions not only to limit state power but also to ensure the protection of human rights as a fundamental element of the constitutional system. Jimly Asshiddiqie emphasizes that the rule of law essentially requires the supremacy of law, equality before the law, limitation of power, and the protection of human rights as the primary characteristics of a democratic state (Asshiddiqie,

2021). Accordingly, Indonesia's recognition as a state governed by law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, gives rise to the consequence that the state is obligated to exercise power based on the principles of legality and respect for human rights. In this context, state responsibility constitutes an integral part of the implementation of the rule of law principle. The concept of state responsibility in human rights law positions the state as the primary actor bearing the obligation to respect, protect, and fulfil the rights of its citizens. The state is not only responsible for actions committed by state officials that directly result in human rights violations (*acts of commission*), but is also accountable for failures to prevent, prosecute, and remedy the consequences of human rights violations (*acts of omission*) (Wico et al., 2021).

Normatively, the state's obligations concerning the protection of human rights have been explicitly regulated in Law Number 39 of 1999 concerning Human Rights, particularly Articles 71 and 72, which affirm that the government bears the obligation and responsibility to respect, protect, uphold, and promote human rights. These provisions demonstrate that the protection of human rights is not merely a moral obligation of the state, but also a constitutional obligation binding upon all organs of state power. Furthermore, Law Number 26 of 2000 concerning Human Rights Courts provides the legal basis for resolving gross human rights violations through the Human Rights Court mechanism, including crimes of genocide and crimes against humanity. The existence of these two legal instruments essentially reflects the state's normative commitment to establishing a human rights protection system that is consistent with the principles of the rule of law and international human rights standards (Musaddad et al., 2024).

Nevertheless, the existence of such regulations has not been fully proportional to the effectiveness of their implementation in constitutional practice. The principal issue concerning human rights protection in Indonesia, particularly in Papua, no longer lies in the absence of legal frameworks, but rather in the weak implementation, law enforcement, and state accountability regarding alleged human rights violations. Within the framework of the rule of law, law should not merely remain as a textual norm (*law in books*), but must also be realized in practical application (*law in action*) through fair, transparent, and non-discriminatory law enforcement. However, the reality of addressing human rights issues in Papua demonstrates a significant gap between normative legal construction and empirical implementation (Marzuki, 2012).

To this day, Papua remains a region characterized by a high level of complexity in human rights issues due to prolonged social, political, and security conflicts. Various reports indicate allegations of human rights violations, including arbitrary arrests, restrictions on freedom of expression, excessive use of force, discrimination against indigenous communities, and alleged extrajudicial killings. Such circumstances reflect a problematic relationship between the state's security approach and the protection of civilians' human rights. In practice, security-oriented measures often tend to dominate over legal and human rights approaches, thereby creating the potential for repressive actions that are inconsistent with the principles of the rule of law (El-Muhtaj, 2019). Theoretically, the state indeed possesses the authority to maintain national stability and public security. Nevertheless, from the perspective of the rule of law, the exercise of such

authority must remain subject to legal limitations and human rights principles. The state cannot invoke national security as a justification for disregarding the fundamental rights of its citizens (Arinanto, 2020). In the context of Papua, the excessive use of security-oriented approaches without effective oversight mechanisms has the potential to further expand social conflict and diminish public trust in the state. This condition demonstrates that human rights issues in Papua are not merely matters of security, but also reflect the state's failure to implement the principles of accountability and human rights protection in a balanced manner (Mikhael, 2022). Cases such as the 2014 Paniai Tragedy and the Wamena Incident serve as examples of how alleged human rights violations in Papua have not been fully resolved through effective legal mechanisms. From the perspective of state responsibility, the slow resolution of human rights cases reflects deficiencies in the implementation of the state's obligation to provide justice for victims. The state should not merely function as the holder of security authority, but also as the guarantor of justice and recovery for victims of human rights violations. The failure of the state to conduct independent and transparent investigations may be regarded as an indication of the suboptimal implementation of the principle of due process of law within a state governed by the rule of law (Sukma et al., 2025).

Furthermore, state responsibility for human rights in Papua must also be understood through the principles of respect, protect, and fulfil. The obligation to respect requires the state to refrain from taking arbitrary actions that restrict or violate the rights of its citizens. In the context of Papua, this principle relates to the prohibition of excessive use of force and disproportionate restrictions on civil liberties. Moreover, the obligation to protect requires the state to safeguard the community from threats of violence, whether perpetrated by state officials or armed groups. Meanwhile, the principle to fulfil obliges the state to ensure the realization of the rights of the Papuan people through equitable development, access to education, healthcare, social welfare, and access to legal justice. However, the implementation of these three principles continues to face various structural obstacles. The dominance of a security-oriented approach often results in human rights protection being treated as a secondary issue in comparison with political stability and national security. In addition, weak transparency in law enforcement and the limited resolution of human rights cases comprehensively indicate that state accountability mechanisms have not functioned optimally. This condition reflects a discrepancy between the normative principles of the rule of law and the practical implementation of state power in the field.

The Implementation of the Principles of Respect, Protect, and Fulfil in Addressing Human Rights Issues in Papua

The state bears three principal obligations concerning human rights, namely to respect, protect, and fulfil the rights of its citizens. These three principles constitute concrete manifestations of state obligations arising from Indonesia's status as a state governed by the rule of law as well as a party to various international human rights instruments (Ilyas & Triadi, 2025). In the context of Papua, the implementation of these principles is particularly significant considering the complexity of the conflict involving security, political, social, and civilian protection aspects. Nevertheless, the implementation of the principles of respect, protect, and fulfil in Papua continues to reveal various structural problems that raise questions regarding the effectiveness of the state's human

rights protection mechanisms. The principle of respect requires the state to refrain from actions that arbitrarily restrict, diminish, or violate the fundamental rights of citizens. In the context of Papua, the implementation of this principle is closely related to the exercise of authority by security apparatuses in addressing conflicts. Fundamentally, the state possesses legitimate authority to maintain national stability and public security; however, the exercise of such authority must remain subject to the principles of proportionality, legality, and respect for human rights. The problem is that various reports indicate that the security approach in Papua continues to display repressive tendencies and has the potential to give rise to human rights violations, including excessive use of force, arbitrary arrests, restrictions on freedom of expression, and the criminalization of certain political activities. Such conditions demonstrate that the implementation of the principle of respect has not yet functioned optimally, as the state is still perceived as prioritizing security stability over the protection of the civil rights of the Papuan people (Muslimin, 2026).

Normatively, the principle of respect for human rights has obtained constitutional guarantees through the 1945 Constitution of the Republic of Indonesia, particularly Articles 28A to 28J, which regulate various fundamental rights of citizens, including the right to life, the right to security, freedom of expression, and the right to legal protection. The reinforcement of these guarantees is also stipulated in Law Number 39 of 1999 concerning Human Rights, which affirms that the state, the government, and all law enforcement authorities are obligated to respect and protect human rights without discrimination. Normatively, these two legal instruments demonstrate that Indonesia has positioned the protection of human rights as an integral component of the rule of law principle and constitutional democracy. However, the implementation of human rights norms in constitutional practice continues to encounter various challenges, particularly in addressing the conflict in Papua. One of the principal issues lies in the dominance of security-oriented approaches, which tend to be prioritized over human rights and social justice approaches. Theo van den Broek argues that the security approach adopted by the state in recent years has instead intensified the escalation of conflict and generated negative impacts on civilian life, including restrictions on freedom of expression, democratic participation, and public access to justice. Such conditions indicate that the handling of the Papua conflict remains more oriented toward maintaining state security stability than protecting the constitutional rights of the Papuan people as citizens (van den Broek, 2022).

From the perspective of the rule of law (*rechstaat*), national security indeed constitutes one of the primary functions of the state. Nevertheless, the exercise of state authority in maintaining security must remain limited by the principles of legality, proportionality, and respect for human rights. A state governed by the rule of law does not justify the repressive use of power without adequate legal control, as such practices have the potential to give rise to arbitrary actions and abuse of power. Therefore, an excessively dominant security-oriented approach in addressing Papua may ultimately create an imbalance between the state's function as the guardian of stability and its obligation as the protector of human rights. In this context, the state is not only required to preserve territorial integrity and national stability, but also to ensure that every security policy continues to guarantee the protection of the civil rights of the community. The dominance of a

security-oriented approach in Papua has ultimately generated structural problems in the protection of human rights (Hasan & Nugroho, 2022).

In addition to the obligation to respect human rights, the state also bears the obligation to protect, namely the duty to safeguard society from threats of human rights violations committed by other parties, whether state or non-state actors. In the context of Papua, this obligation becomes increasingly complex because the conflict involves both security forces and armed groups, each of which has the potential to cause civilian casualties. The state is obligated to ensure the protection of the community from acts of violence, intimidation, and threats to the lives and safety of civilians. Nevertheless, the implementation of the obligation to protect continues to face serious challenges due to weak oversight and accountability mechanisms concerning the use of force by security apparatuses. This condition is reflected in the numerous reports of civilian casualties resulting from the armed conflict in Papua, including women and children who are directly affected by the prolonged conflict. From a human rights perspective, the state's failure to provide effective protection for civilians may be regarded as a form of *acts of omission*, namely state negligence in carrying out its constitutional obligations. In several instances, the state has even been perceived as prioritizing repressive approaches over community protection measures. This demonstrates that the implementation of the principle to protect has not yet been fully aligned with the principles of the rule of law, which require equal legal protection for every citizen without discrimination (Hardiyanto & Saryono, 2023).

On the other hand, the state also bears the obligation to fulfil, namely the duty to realize the fundamental rights of society through concrete policies and actions. This principle is not merely related to protection from violence, but also encompasses the fulfilment of the economic, social, cultural, and political rights of the Papuan people. In the context of Papua, the implementation of the principle to fulfil is closely associated with the provision of access to education, healthcare, social welfare, economic development, and access to legal justice. Although the government has implemented various development policies through the Special Autonomy framework for Papua, their implementation continues to attract criticism concerning development disparities, the marginalization of indigenous communities, and the suboptimal distribution of welfare. These conditions indicate that development policies in Papua have not been entirely grounded in a human rights-based approach. The state tends to position development as an instrument of political and security stabilization rather than as a means of substantively fulfilling the rights of the community. Consequently, the Papuan people continue to face various structural challenges, including poverty, limited access to education and healthcare, and the low level of participation of indigenous communities in policymaking processes. From the perspective of the rule of law, such circumstances demonstrate that the state has not yet fully implemented its obligation to fulfil human rights effectively and equitably (Reumi, 2023).

Furthermore, the effectiveness of human rights protection in Papua continues to face challenges arising from weak law enforcement mechanisms concerning alleged human rights violations. The resolution of gross human rights cases such as the Paniai Tragedy and the Wamena Incident has not yet fully provided a sense of justice for the victims or for the Papuan community.

The slow pace of legal settlement reflects accountability problems within Indonesia's human rights enforcement mechanisms. In a state governed by the rule of law, the principle of *due process of law* should serve as the primary foundation for resolving human rights cases, ensuring that every alleged violation is processed transparently, independently, and without discrimination. However, in practice, the settlement of human rights cases in Papua is often perceived as failing to satisfy the principles of substantive justice due to limited transparency and insufficient protection of victims' interests (Musak, 2019).

CONCLUSION

Based on the results of this discussion, it can be concluded that state responsibility for alleged human rights violations in Papua constitutes a constitutional consequence of Indonesia's principle as a state governed by the rule of law (*rechstaat*). The concept of state responsibility positions the state as the party obligated to respect, protect, and fulfil the rights of its citizens, both through preventive and repressive measures against all forms of human rights violations. Normatively, Indonesia already possesses adequate legal instruments through Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts, which reflect the state's commitment to the protection and enforcement of human rights. Nevertheless, the implementation of these legal norms in practice continues to encounter various structural obstacles, particularly due to the dominance of security-oriented approaches in addressing the Papua conflict. Such conditions have resulted in the suboptimal implementation of human rights protection and demonstrate the existence of a gap between the normative construction of the rule of law and the empirical realities in practice. Furthermore, the implementation of the principles of respect, protect, and fulfil in addressing human rights issues in Papua has not yet been carried out effectively and equitably. Repressive security-oriented approaches continue to create the potential for restrictions on civil rights, excessive use of force, and weak protection of civilians. On the other hand, the state's obligation to fulfil the fundamental rights of the Papuan people through development, education, healthcare, and access to justice also continues to face challenges related to inequality and the marginalization of indigenous communities. The slow resolution of alleged human rights violation cases, such as the Paniai Tragedy and the Wamena Incident, demonstrates that accountability mechanisms and human rights law enforcement have not functioned optimally in accordance with the principle of *due process of law*. Therefore, the state needs to undertake policy reforms that are more oriented toward a human rights-based approach, strengthen oversight and accountability mechanisms for state apparatuses, and position the protection of human rights and substantive justice as central elements in resolving the Papua conflict so that the implementation of the rule of law principle may be realized more concretely and equitably.

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