

# ASSESSING THE NATIONAL HUMAN RIGHTS COMMISSION'S (KOMNAS HAM) INDEPENDENCE IN INDONESIA'S STATEMENT SYSTEM

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## ABSTRACT

The National Human Rights Commission (Komnas HAM) is an independent, national state commission tasked with the responsibility of conducting human rights studies, research, counseling, investigations, monitoring, and mediation. The purpose of this study is to ascertain Komnas HAM's status and role within the Indonesian Constitutional System, as well as its accountability within the Indonesian Constitutional System. According to the nature of the inquiry, this is a library research on the subject of Komnas HAM. The syar'i theological approach was applied in the investigation. The findings of this study reveal that Komnas HAM has a distinct status and function within the Indonesian constitutional system; Komnas HAM's job is to strengthen human rights protection and enforcement. The research's implications are to emphasize Komnas HAM's constitutional status in Indonesia and to realize human rights enforcement through Komnas HAM's partnership with the community.

*Keywords: Komnas HAM; Siyasah Syar'iyah; Wazir al-tawfid*

## INTRODUCTION

The founders of modern Indonesia desired a state of law (*rechstaat*) rather than a state of power (*machstaat*).<sup>1</sup> In a state of law, a notion known as the *Trias Poitica* describes the existence of three pillars of power: legislative, executive, and judiciary.<sup>2</sup> *Trias Politica* is a normative theory that emphasizes that power should not be vested in a single institution, but rather distributed in a methodical manner that prevents power abuse. Potential for abuse of power exists when power is concentrated in a single institution. Thus, power distribution can help to minimize power misuse.

<sup>1</sup> Jumadi, *Negara Hukum dan Pembangunan Nasional Berwawasan Hukum, Jurisprudentie: Jurnal Ilmu Hukum Fakultas Syariah dan Hukum*, Volume 4, Nomor 1 (Juni 2017), pp. 2.

<sup>2</sup> Miriam Budiarto, *Dasar-Dasar ilmu politik Edisi Revisi*, (Jakarta: PT. Gramedia Pustaka Utama, 2008), pp.282.

According to many observers, the existence of an independent state commission demonstrates a lack of trust in current state institutions. Additionally, the post-new order established a period of transition to reform, initially transitioning from an authoritarian to a democratic period.<sup>3</sup> As a result, many independent commissions have emerged over time. This was inspired by the third wave of democracy, which resulted in the establishment of an independent state commission during the political transition period. Alternatively, the Independent State Commission is referred to as the State Auxiliary Organ.

Within the framework of the state administration system, the existence of an independent state commission must be accompanied by a clearly-defined position and function, as well as a well-defined methodology. Thus, it is important to have a status or position as a subject inside the state, which includes institutions, commissions, agencies, or organizations, as well as officials and people. Meanwhile, the function encompasses public power, customs/human rights, and public interest commitments<sup>4</sup>.

In Islam, the establishment of an independent commission or organization is intended to aid in the administration of justice. The distinction is that in Islam, autonomous commissions are referred to as "fields" that aid in the governance of the state. Among the institutions that played a significant role during the Prophet Muhammad's lifetime was the Baitul Mall, which was founded to aid in the management of Ganimah land (spoils of war).

The National Human Rights Body (Komnas HAM) is a component of an independent governmental commission established by Presidential Decree No. 50 of 1993, which was later ratified by Human Rights Law No. 39 of 1999.<sup>5</sup> This commission was established to carry out and enforce human rights on an equal footing with other institutions charged with conducting studies, research, counseling, monitoring, and mediation pertaining to human rights.<sup>6</sup> While Komnas HAM is an autonomous governmental entity, it is still accountable to the President and the DPR and performs some judicial powers (semi-judicial), placing it under the Supreme Court.

The problem is stated as follows: What is the position of Komnas HAM in the Indonesian constitutional system? How does Komnas HAM fit into Indonesia's constitutional system? From a *siyasa syar'iyah* standpoint, what is the accountability process for Komnas HAM as an independent commission?

<sup>3</sup> Darmawati dan Halimah B, *Nasionalisme dan Demokrasi dalam Pandangan Hukum Islam, Siyasatuna: Jurnal HukumTatanegara Fakultas Syariah dan Hukum*, Volume 2 Nomor 3 ( September, 2020) pp. 3.

<sup>4</sup> Ni'matul Huda, *Hukum Tata Negara Indonesia Edisi Revisi*, (Jakarta: Rajawali Pers, 2012), pp. 241.

<sup>5</sup> Jazim Hamidi dan Mustafa Lutfi, *Hukum Lembaga Kepresidenan Indonesia*, (Bandung: P.Alumni, 2010), pp.148.

<sup>6</sup> Firmansyah arifin dkk, *Lembaga Negara dan Sengketa Kewenangan antar Lembaga Negara*, konsorsium Reformasi Hukum Nasional (KRHN), (Jakarta 2005), pp. 51.

## METHOD

This research is conducted in a library and employs normative legal or juridical research methods, specifically through examining library documents or secondary data as primary sources. Additionally, this study employs a Syar'i Theology approach, which was utilized to assess Komnas HAM's place in the Indonesian Administrative System, utilizing evidence from the Qur'an, Hadith, and literature. This study examines the National Human Rights Commission's viewpoint using the Islamic religious balance. While secondary data sources may include journals or other publications that are directly linked to the research. The data gathering process begins with the identification and reading of several references, which are subsequently examined in order to arrive at an appropriate judgment.<sup>7</sup>

## RESULT AND DISCUSSION

### 1. The constitutional status of Komnas HAM in Indonesia

Today's practice of state administration is defined by three (three) institutions: the legislature, the act's implementer (Executive), and the court that adjudicates against the statute (Judicative)<sup>8</sup> According to Philipus M. Harjon, the position of state institutions can be viewed from a variety of perspectives. To begin, the position is viewed in comparison to another state entity. Second, the location is evaluated in terms of its primary function. This is consistent with MPR Decree VI/MPR/1973 and MPR Decree III/MPR/1978. According to the 1945 Constitution, state institutions were divided into two categories during the New Order era: those headed by the MPR and those headed by the President, DPA, DPR, BPK, and Supreme Court (MA). However, with the passage of the Fourth Amendment in 2002, the two periods were repealed pursuant to MPR Decree No. VI/MPR/1973 and MPR Decree No. III/MPR/1978.<sup>9</sup>

Bruce Ackerman stated plainly that the establishment of an independent state commission was a rejection of the US paradigm of separation. Ackerman's argument appears to underline the rationality of the establishment of an independent state commission as a result of the democratic transition.<sup>10</sup>

Along with the primary state institutions, there exist secondary state institutions. Supporting state institutions are developed in order to help the state achieve its aims in terms of ensuring the welfare of its citizens. Additionally, the

<sup>7</sup> Rahmiati, *Terampil Menulis Karya Ilmiah*, (Makassar: Alauddin University Press, 2012), pp. 147.

<sup>8</sup> Adriana Mustafa, Implementasi antara Legislatif, Eksekutif, dalam Pembentukan Peraturan Daerah yang Partisipasif, *Al-Qadau: Jurnal Hukum Keluarga Islam Fakultas Syariah dan Hukum*, Volume 5, Nomor 2 (Desember 2018), pp. 2.

<sup>9</sup> Philipus, M. Harjon dalam buku Titik Triwulan Tutik, *Kontruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945* (Jakarta: Kencana, 2011), pp.177.

<sup>10</sup> Ismail Aries, Kedudukan KPK dalam Sistem Ketatanegaraan dalam Perspektif Teori Saparation Of Power, *Jurisprudentie: Jurnal Ilmu Hukum Fakultas Syariah dan Hukum*, Volume 5 Nomor 1 (Juni 2018), pp. 2.

presence of supporting institutions is a result of the complexity of modern democracy, and the community's growing understanding of the concept of statehood, necessitating a more responsive demand for state institutions to provide services and protection to the community. To establish the direction of a commission or institution, it is vital to define its status and position precisely. Each commission or institution's perspective will have an effect on how authorities, including the National Human Rights Commission, carry out their mandates (Komnas Ham). Although certain commissions, such as the General Election Commission, are constituted with a clear legal cover in the 1945 Constitution, others are formed without a clear legal umbrella in the 1945 Constitution. Frequently, the issue is the standard for determining the legality of authority. Whether any authority founded on the rule of law qualifies as legal or legal authority. As a result, there is a need for clarification regarding each governmental institution's status within the Indonesian constitutional structure.<sup>11</sup>

According to Soerjono Soekanto, a position often depicts a location or a location inside a location vertically. In a pluralistic society, stable status is necessary to maintain social stability.<sup>12</sup> Additionally, Soerjono Soekanto and Purudi explained that there must be a status or position within the state that is a subject, which includes institutions, commissions, or organizational bodies, officials, and citizens, while roles include power, public service, power/human rights, and public interest obligations.<sup>13</sup>

Komnas HAM was founded on the basis of Presidential Decree Number 50 of 1993 on Human Rights, which was later validated by the presence of MPR Decree Number XVII/MPR/1998 mandating state authorities to spread human rights understanding. Additionally, the order establishes a special commission for assessment, monitoring, research, and mediation, dubbed the National Human Rights Commission. On September 23, 1999, in response to the MPR's judgment, Law No. 39 of 1999 about Human Rights was enacted, followed by Law No. 20 of 2000 concerning the Court of Human Rights.

The National Human Rights Commission's viewpoint is also mentioned in Article 1 point 7 of Human Rights Law No. 39 of 1999, which stipulates that Komnas HAM's position is equivalent to that of other governmental entities. Komnas HAM is a power structure distinct from Montesque's Trias Politica idea. However, it cannot be divorced from the Trias Politica notion, as it is fundamentally derived from it. When seen from the perspective of its establishment, Komnas HAM should ideally be on an equal footing with the House of Representatives, the President, the Supreme Court, and the Constitutional Court, while maintaining a vertical alignment with the constitution due to its constitutional authority. the 1945 Constitution and is not subject

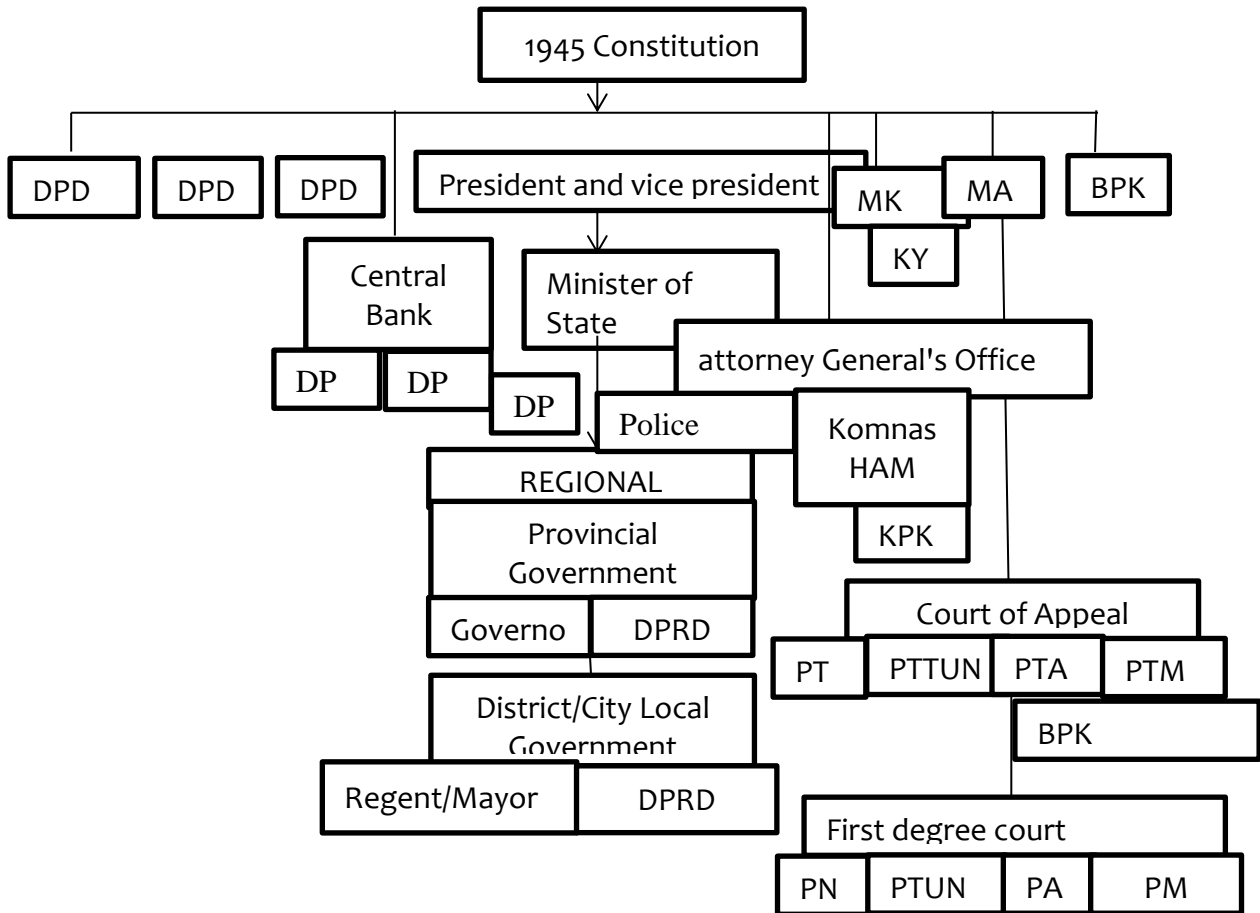
<sup>11</sup> Andi Safriani, Telaah terhadap Hubungan Hukum dan kekuasaan, *Jurisprudentie: Jurnal Ilmu Hukum Fakultas Syariah dan Hukum*, Volume 4, Nomor 2 (Desember, 2017), pp. 8.

<sup>12</sup> Soerjono Soekanto, *Beberapa Aspek Sosio Yuridis Masyarakat*, (Bandung: Alumni, 1983), pp. 47.

<sup>13</sup> Purnadi Purbacaraka dan Soerjono Soekanto, *Menelusuri Sosiologi Hukum Negara*. (Jakarta: Rajawali Press, 1993), pp. 1993.

to the control of the three basic independent branches of government.

**Table 1. Pattern of Relations between State Institutions**



Source: Relations between state institutions by Gunawan A. Tauda.<sup>14</sup>

Independent State Commissions such as the General Election Commission and the Judicial Commission (constitutional organs), as well as the Corruption Eradication Commission and the National Human Rights Commission (both of which have constitutional significance), should ideally be located on an equal footing or at the very least parallel to the DPR, the President, the Supreme Court, and the Constitutional Court.

When all independent state commissions are grouped together under the DPD, MPR, DPR, President and Vice President, MK, MA, and BPK (high state institutions), it is clear that these state institutions are classified as state auxiliary organs rather than state institutions under the former. constitution and laws. Thus, autonomous state commissions remain subordinate to high state institutions and serve as extra or

<sup>14</sup> Gunawan A. Tauda, Kedudukan Komisi Negara Independen dalam Struktur Ketatanegaraan, Pranata Hukum: Jurnal Alumni Magister Ilmu Hukum UGM, Volume 6, Nomor 2, (Juli 2011), pp. 178.

supporting state institutions in the current state system. When seen through the lens of state institution theory and the chart outlined above, Komnas HAM can be characterized as a state auxiliary organ that serves to support the primary state institutions. Komnas HAM is a second-tier state institution established by legislation and equal in status to other state institutions (other auxiliary state institutions). The constitutional structure continues to place Komnas HAM as an autonomous state commission behind high state entities..

**Table. 1.2 the relationship between Komnas HAM and its constituent institutions, namely the President and the DPR.**

State Institutions	Point of View	Description
President	Judging from the law that formed it	Komnas HAM is an institution established by the president based on Presidential Decree no. 50 year 1993
	Member Recruitment	Komnas HAM members are elected and determined by the president (Article 83 Paragraph (1))
	Accountability	Komnas HAM provides accountability to the President with a copy to the Supreme Court
	The function of Komnas HAM	The function of Komnas HAM is to provide information to the president regarding studies and research carried out related to cases of human rights violations
People's Representative Council (DPR)	The regulations for its formation	Komnas HAM received roles and functions that were legitimized by the DPR with the enactment of Law No. 39 of 1999 concerning Human Rights
	Recruitment of members	The recruitment of Komnas members is carried out by the DPR
	Accountability	Komnas HAM provides accountability to the DPR with a copy to the Supreme Court



	Functions	Performed submissions to the DPR regarding cases of human rights violations.
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Source: Relations between Komnas HAM and its institutions. Founded by I Gusti Ayu Oka Mahadewi.<sup>15</sup>

## 2. The Role of Komnas HAM in the Indonesian Constitutional System

Each human being has a right endowed by Allah SWT that deserves to be recognized, respected, and supported by all. Indonesia has a sordid history of human rights breaches, whether perpetrated by foreign countries or domestically. According to Abdurrahman, as cited by Usman Jafar:

“there are fundamental democratic values and some are derivations or continuations of the fundamental ones.” According to him, democracy is defined by three fundamental values: justice, liberty, and deliberation.<sup>16</sup>

There are two types of legal issues in the evolution of Islamic law. They are fixed and elastic.<sup>17</sup> The discourse on human rights protection (HAM) is always linked to the extent to which the government's (ruler's) implementation of the nation/state may be said to pay attention to citizens' rights (civilians' rights). The increase in human rights breaches necessitates the establishment of a special commission to investigate and prosecute cases of human rights violations. Komnas HAM was established to uphold and protect human rights ideals consistent with Pancasila and the 1945 Constitution. Komnas HAM performs the following functions in order to accomplish its objectives, as specified in Article 76 of Human Rights Law No. 39 of 1999:

- a) In order to accomplish its mission, Komnas HAM does human rights assessment, research, counseling, monitoring, and mediation.
- b) Komnas HAM is comprised of community leaders who are professional, devoted, and of high integrity, who uphold the ideas of a rule of law and welfare state founded on fairness, respect for human rights, and compliance with basic human obligations.

<sup>15</sup> I Agusti Ayu Oka Mahadewi, *Kajian Yuridis Kedudukan Komnas HAM dalam Struktur Ketatanegaraan Indonesia*, Nomor 12, (November 2018), pp. 7.

<sup>16</sup> Usman, *Islam dan Politik Telaah atas Pemikiran Politik Kontemporer di Indonesia*, *Al-Daulah: Jurnal Hukum Tatanegara Fakultas Syariah dan Hukum*, Volume 6, Nomor 1 (Juni 2017), pp. 7.

<sup>17</sup> Abdi Wijaya, *Perubahan Hukum dalam Pandangan Ibnu Qayyim*, *Al-Daulah: Jurnal Hukum Tatanegara*, Volume 6, Nomo 2, (Desember, 2017), pp. 2.

### C. The Accountability Process of Komnas HAM in the Indonesian Constitutional System; *Siyasah Syar'iyah* Perspective

Accountability is a term that refers to the interaction between government institutions and the general public.<sup>18</sup> When viewed through the lens of its responsibilities, Komnas HAM has two, namely to the President and the DPR, with a copy to the Supreme Court, as specified under Article 97 of Human Rights Law No. 39 of 1999. Komnas HAM has two vertical positions as a result of this obligation. To begin, when examining Article 1 point 7, Komnas HAM's viewpoint is consistent with that of other institutions. Meanwhile, judging by its responsibility (Article 97) and election (Article 83 paragraph 1), this viewpoint is at least consistent with the legal framework underlying Komnas HAM. Accountability is critical in Islam since it relates to the mandate granted.<sup>19</sup>

This is consistent with the following hadith:

*Meaning:*

*"If the mandate has been squandered, simply wait for the destruction to occur." A buddy inquired: What does it mean to be squandered? "If issues are not left to the specialists," the Prophet said, "then prepare for devastation." (Bukhari-6015) .*

What the Prophet Muhammad SAW said is true. If whoever receives the mandate does not carry it out as effectively as possible, destruction will result. How critical it is to uphold every trust bestowed by Allah swt. Whether it is in the form of favors, positions, or leaders (caliph), because everything is under His supervision.

If it pertains to the National Human Rights Commission's accountability, it should be executed since it pertains to the mandate provided by the people to preserve the rights, principles, and human values established by Allah swt. Because every human activity and every mandate issued will be held accountable, every leader has the right to be held accountable for the mandate issued both before humans and before Allah swt. Additionally, the hadith narrated by Bukhari confirms this hadith.:

*Meaning:*

*"Each of you is a leader, and each leader will be held accountable".<sup>20</sup>*

Accountability is the most important and difficult aspect of Islam because it relates to how to maintain the greatest amount of trust possible. Indeed, the Prophet repeated the sentence *kullukum ra'in*, which begins with a warning letter (*tanbih*), namely as a signal and warning to all mankind to fulfill their responsibilities.<sup>21</sup> They

<sup>18</sup> Hadi Daeng Mappuna, *Islam dan Negara, Al-Daulah: Jurnal Hukum Tatanegara Fakultas Syariah dan Hukum*, Volume 5, Nomor 1, (Juni, 2017). pp.2.

<sup>19</sup> Lomba Sultan, *Dinamika Perkembangan Hukum Islam dari Masa ke Masa*, (Makasar: Alauddin University Press, 2014) pp. 4.

<sup>20</sup> Ari Prasetyo, *Kepemimpinan dalam Perspektif Islam*, (Jawa Timur: Zifatama Jawara, 2014), pp. 26.

<sup>21</sup> Ahmad Sunarta dan Syamsuddin Noor, *Himpunan Hadits Shahih Bukhari*, (Jakarta: An-Nur, 2009), pp.103.



have been granted authority and trust because they will undoubtedly be held accountable before Allah swt. Thus, assuming the legislative basis for its formation is followed, the Komnas HAM institution will be legally and financially accountable to the government and/or parliament via monthly reports. Apart from being legally accountable to the government and/or parliament, national human rights institutions are also directly accountable to the public, which they can do in a variety of ways, including by disseminating human rights reports and other publications. Soerjono Soekanto underlined the importance of continually and continuously increasing and maintaining legal awareness. After all, the only source of law production and its binding force is the community's legal understanding.<sup>22</sup>

## CONCLUSION

Komnas HAM is a presidential commission established pursuant to Presidential Decree No. 50/1993 and afterwards legitimized by the DPR by the passage of Law No. 39/1999. The National Human Rights Commission has the same standing as other state institutions. Human Rights Act No. 39 of 1999 Komnas HAM's validity as an independent state commission pursuant to the Check and Balances Principle is meant to ensure that each institution is aware that state commissions monitor one another. Siasah Syar'iyah refers to the National Human Rights Commission as wazir al-tafwidh. He is the supreme leader of the Islamic state system. Regarding vizier al-appointment, tafwidh's he was appointed directly by the caliph to help the caliph with state chores and in the sphere of human rights. The National Human Rights Commission's existence as a means of addressing numerous human rights breaches specified by the 1945 Constitution. The National Human Rights Commission is currently engaged in a significant war throughout the country. Komnas HAM is a non-governmental organization dedicated to upholding human rights principles through assessment, research, counseling, monitoring, and mediation in matters involving human rights breaches. At the outset, the national commission on human rights must address cases of human rights breaches. The national commission on human rights is accountable to the DPR and the president for implementing the principle of checks and balances that underpins state institution administration.

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<sup>22</sup> Ahkam Jayadi, Membuka Tabir Kesadaran Hukum, Jurisprudentie: Jurnal Ilmu Hukum Fakultas Syariah dan Hukum, Volume 4, Nomor 2, (Desember 2017), pp. 8.

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