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FOREWORD

Praise be to Allah SWT, whose grace and guidance have enabled us to publish Jurnal HAM Vol. 17 No. 2, August 2025. In this edition, we are proud to present five scholarly articles that examine important human rights issues across different legal, social, and institutional contexts. Continuing our commitment to the development of human rights discourse, this edition brings together various perspectives on equality, non-discrimination, legal accountability, judicial protection, and corporate responsibility. These contributions remind us that the protection of human rights requires more than the existence of legal rules. It also depends on how laws are designed, interpreted, and implemented in practice.

This edition features five articles that examine different dimensions of human rights protection. The first article, "Neutral Rules, Unequal Outcomes: Indirect Discrimination and Educational Equality in International Scholarship Governance," explores how seemingly equal administrative requirements in international scholarship programmes may create indirect discrimination against applicants from disadvantaged educational backgrounds, highlighting the need for substantive equality in access to education. The second article, "Rule-Bending" Accountability for Perpetrator Liability of Enforced Disappearances and Progressive Transitional Justice, examines the challenges of holding perpetrators of gross human rights violations accountable, particularly in cases of enforced disappearances, and proposes progressive law and transitional justice as approaches to overcoming institutional barriers to accountability. The third article, "Recognizing Male Rape: Consent, Non-Discrimination, and the Limits of Gender-Neutral Law," discusses the limitations of Indonesia's legal framework in recognising male victims of rape and calls for more inclusive legal provisions that ensure equal protection regardless of gender. The fourth article, "Judicial Formalism in Evaluating Voluntary Confessions: Reducing Non-Derogable Rights in Trial Proceedings Post-2025 Criminal Procedure Code," analyses judicial practices in examining voluntary confessions and reveals the gap between formal compliance with legal requirements and substantive protection against coercion and torture. Finally, the fifth article, "The Rempang Eco City Dilemma: Reorienting State and Corporate Responsibilities Based on Environmental, Social, and Governance Principles," examines the responsibilities of the state and corporations in development projects, emphasising the importance of human rights due diligence, community participation, and environmental protection.

Taken together, these five articles reveal the gap between formal legal equality and the actual fulfilment of human rights. Whether in educational access, transitional justice, protection against sexual violence, criminal proceedings, or development policies, the existence of legal rules does not automatically guarantee justice. These issues demonstrate that human rights protection must be assessed not only through the content of legal provisions but also through their practical consequences for individuals and communities.

Finally, we would like to extend our sincere gratitude to the Head of the Legal Policy Strategy Agency, Ministry of Law of the Republic of Indonesia, for his continued support in the publication of Jurnal HAM. We also express our heartfelt thanks to the authors and reviewers whose dedication and expertise enrich this journal and broaden the scope of human rights scholarship. Their work proves, once again, that the pen is mightier than the sword in the ongoing pursuit of justice and dignity for all.

We hope that this edition will provide valuable insights for academics, legal practitioners, policymakers, and human rights advocates. May the articles presented here encourage further research, critical dialogue, and meaningful action towards strengthening human rights protection and building a more just and inclusive society.

Enjoy Reading!
-Editorial Board-

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Neutral Rules, Unequal Outcomes:
Indirect Discrimination and Educational Equality in International Scholarship Governance

Jurnal HAM, Volume 17, Issue 2, August 2026, page 85-98

International scholarship schemes are widely promoted as instruments for advancing educational access and human capital development, particularly in the Global South. Yet their administrative governance frameworks may unintentionally undermine these objectives. This study examines how eligibility requirements and documentation procedures within international scholarship systems shape substantive equality of educational access. Adopting a qualitative socio-legal methodology, the study analyses scholarship policies, administrative regulations, and institutional practices against international human rights standards, particularly Article 13 of the International Covenant on Economic, Social and Cultural Rights and General Comment No. 13 of the Committee on Economic, Social and Cultural Rights. The findings indicate that procedurally uniform requirements, especially those governing documentation timing and administrative compliance, may generate indirectly discriminatory effects by disproportionately disadvantaging academically qualified applicants from structurally under-resourced educational contexts. Such governance practices may further encourage strategic procedural adaptation among applicants, thereby distorting merit-based selection. The study recommends greater procedural flexibility, including conditional admissions mechanisms and context-responsive documentation policies, to better align scholarship administration with substantive equality and the right to education.

Keywords: international scholarships; educational equality; right to education; administrative governance

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"Rule-Bending" Accountability for Perpetrator Liability of Enforced Disappearances and Progressive Transitional Justice

Jurnal HAM, Volume 17, Issue 2, August 2026, page 99-123

This paper examines how the implementation of liability for gross human rights violators in transitional justice contexts often involves "rule-bending." It focuses on the tension between legal norms and the interests of authorities, particularly in cases of enforced disappearances, concerning command responsibility. Taking into account the Indonesian case and comparing it to the implementation of the liability prosecution process in various countries, this research employed a socio-legal method and crime semiotics to deconstruct the law for analysis purposes. The research employed the rule of law theory by Lon Fuller as the grand theory, progressive law theory by Satjipto Rahardjo as the middle theory, and the liability theory of gross human rights violations, particularly in relation to Law No. 26 of 2000 as applied theory. The research results indicate that the rule-bending of processing the liability of gross human rights violators, particularly in the case of enforced disappearances, is associated with negative rule-bending, which involves a culture of autocratic legalism. The progressive law and transitional justice provide a solution to what this research indicates, which is the novelty of the research, as a transformative law model that covers the system of law and the individuals, particularly law enforcement officers, to be progressive: having compassion, empathy, and daring to prosecute the liability of past gross human rights violators.

Keywords: gross human rights violations; rule-bending; rule breaking liability; human rights court; international criminal court

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Recognizing Male Rape: Consent, Non-Discrimination, and the Limits of Gender-Neutral Law

Jurnal HAM, Volume 17, Issue 2, August 2026, page 125-152

Rape can occur to anyone, including men; therefore, legal protection is necessary to ensure equal rights for all individuals as human beings. Indonesian law previously regulated rape explicitly from a female-victim perspective, as reflected in Article 285 of the Criminal Code (KUHP), which used the phrase "a woman." This provision fails to reflect equality and results in legal injustice for men who become victims of rape. To date, Indonesian law has largely recognized men only as perpetrators of rape, indirectly creating discriminatory elements within the criminal justice system. This study employs a socio-legal research method, using statutory and comparative legal approaches. Legal regulation of rape against men plays a crucial role in determining fair legal protection for male victims of rape. However, existing rape regulations have not yet been able to ensure the fulfillment of human rights and effective law enforcement for male victims. Therefore, inclusive legal reform is required to protect victims regardless of gender perspective, thereby opening greater opportunities for law enforcement and the realization of human rights. It is essential to reconstruct the law in a more inclusive and gender-neutral manner. Such efforts can be undertaken by refining Article 473 on rape in the new Criminal Code through comparative analysis with the United Kingdom's Sexual Offences Act 2003. This reform also requires an expanded understanding of justice and human rights within Indonesian law, including clearer recognition of consent, coercion, and the absence of consent. The objective is to ensure that the law no longer favors gender stereotypes, but instead provides universal protection for victims, creating space for equality that acknowledges men as potential victims within the substance, structure, and legal culture of an equitable legal system.

Keywords: consent-based approach; gender neutral law; non-discrimination; male rape; criminal law reform

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Judicial Formalism in Evaluating Voluntary Confessions:
Reducing Non-Derogable Rights in Trial Proceedings Post-2025 Criminal Procedure Code

Jurnal HAM, Volume 17, Issue 2, August 2026, page 153-172

The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (CPC) introduces a defendant's confession mechanism in court proceedings as stipulated in Article 205, that requires Judges to assess six elements before diverting the examination to a summary proceeding, including the element that the confession was not caused by pressure, coercion, or torture during the investigation and prosecution process. Textually, this provision aligns with Article 33 of Law Number 39 of 1999 concerning Human Rights and Article 15 of the Convention Against Torture. However, its examination mechanism relies on court proceedings based on case files produced by the very authorities whose conduct is being scrutinized. This article aims to analyze the normative construction of such guarantees and examine the extent to which their application in district court decisions post-enactment of the new CPC reflects a substantive examination. This research employs a normative juridical method, analyzing district court decisions that apply Article 205 of the CPC available in the Supreme Court Decision Directory, utilizing a formal-substantive indicator framework developed by the author. The analysis of the six available decisions reveals that two decisions completely lack explicit consideration of the freedom-from-coercion element; three decisions merely state that all requirements are met without outlining the underlying basis (formal); one decision explicitly mentions the element but lacks supporting evidentiary descriptions (semi-formal); and not a single decision demonstrates a substantive examination. This article is expected to contribute to filling the literature gap, which has predominantly focused on the normative construction of guilty pleas without examining judicial practices, while simultaneously offering an analytical framework to monitor the implementation of similar provisions in the future.

Keywords: human rights; criminal procedure code; guilty plea; torture; court decisions

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The Rempang Eco City Dilemma: Reorienting State and Corporate Responsibilities Based on Environmental, Social, and Governance Principles

Jurnal HAM, Volume 17, Issue 2, August 2026, page 173-188

Environmental Social Governance (ESG) investments have entered a phase of rapid development globally, forcing a paradigm shift in how corporate activities affect local communities and their ecosystems. The revocation of the National Strategic Project (PSN) status of Rempang Eco City under Presidential Regulation Number 12 of 2025 has created a significant legal transition and a regulatory vacuum regarding land acquisition and resettlement responsibilities. This study aims to analyze the legal implications of the post-PSN resettlement schemes, specifically focusing on the government's "Local Transmigration" policy, and to reconstruct a human rights-based corporate-state responsibility model using the ESG framework. This study employs a doctrinal (normative) legal research method combined with a descriptive-analytical qualitative research design based on John W. Creswell's theoretical framework, utilizing secondary legal sources and statutory synchronization. The study finds that the post-PSN transition shifts the land dispute back to a pure private law corridor, invalidating coercive state acquisition under the guise of public interest. The proposed "Local Transmigration" program contains an administrative fallacy and risks violating the ecological sovereignty of traditional fisherfolk. Under OJK Regulation Number 51/POJK.03/2017, the ESG framework serves as a binding legal bridge that forces the concession holder (PT MEG) to internalize human rights due diligence (HRDD) to secure its social license to operate. Human rights mainstreaming requires the integration of private corporate liabilities into the state's public protection framework. The Ministry of Transmigration should evaluate the local transmigration program and prioritize fair compensation and meaningful consultation under Law Number 2 of 2012.

Keywords: environmental social governance; and human rights; local transmigration; rempang eco city; resettlement

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Netralitas Aturan, Ketidaksetaraan Dampak: Diskriminasi Tidak Langsung dan Kesetaraan Pendidikan dalam Tata Kelola Beasiswa Internasional

Jurnal HAM, Volume 17, Nomor 2, Agustus 2026, hal. 85-98

Skema beasiswa internasional secara luas diperkenalkan sebagai instrumen untuk memajukan akses pendidikan dan pengembangan sumber daya manusia, khususnya di Negara-Negara Selatan (Global South). Namun, kerangka tata kelola administratifnya dapat secara tidak disengaja menghambat pencapaian tujuan tersebut. Penelitian ini mengkaji bagaimana persyaratan kelayakan dan prosedur dokumentasi dalam sistem beasiswa internasional membentuk kesetaraan substantif dalam akses terhadap pendidikan. Dengan mengadopsi metodologi sosio-legal kualitatif, penelitian ini menganalisis kebijakan beasiswa, regulasi administratif, dan praktik kelembagaan berdasarkan standar hak asasi manusia internasional, khususnya Pasal 13 Kovenan Internasional tentang Hak-hak Sipil dan Politik serta General Comment Nomor 13 dari Komite Hak Ekonomi, Sosial, dan Budaya. Temuan penelitian menunjukkan bahwa prosedur yang seragam, terutama yang mengatur waktu pengumpulan dokumen dan kepatuhan administratif, dapat menimbulkan dampak diskriminasi tidak langsung karena secara tidak proporsional merugikan pelamar yang memenuhi kualifikasi akademik yang secara struktural kekurangan sumber daya dari konteks pendidikan. Praktik tata kelola tersebut juga dapat mendorong adaptasi prosedur yang bersifat strategis di kalangan pelamar, sehingga mendistorsi seleksi berbasis merit. Penelitian ini merekomendasikan fleksibilitas prosedur, termasuk mekanisme penerimaan bersyarat dan kebijakan dokumentasi yang responsif terhadap konteks, guna menyelaraskan administrasi beasiswa dengan prinsip kesetaraan substantif dan pemenuhan hak atas pendidikan.

Keywords: beasiswa internasional; kesetaraan pendidikan; hak atas pendidikan; tata kelola administratif

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"*Rule-Bending*" Pertanggungjawaban Pelaku Pelanggaran Hak Asasi Manusia Berat dalam Kasus Penghilangan Paksa dan Keadilan Transisi yang Progresif

Jurnal HAM, Volume 17, Nomor 2, Agustus 2026, hal. 99-123

Penelitian ini mengkaji bagaimana penerapan pertanggungjawaban bagi pelanggar HAM berat dalam konteks keadilan transisi seringkali melibatkan "pelanggaran aturan". Makalah ini berfokus pada ketegangan antara norma hukum dan kepentingan otoritas, khususnya dalam kasus penghilangan paksa, terkait tanggung jawab komando. Dengan mempertimbangkan kasus Indonesia dan membandingkannya dengan penerapan proses penuntutan pertanggungjawaban di berbagai negara, penelitian ini menggunakan metode sosio-legal dan semiotika kejahatan untuk mendekonstruksi hukum guna keperluan analisis. Penelitian ini menggunakan teori rule of law oleh Lon Fuller sebagai grand theory, teori hukum progresif oleh Satjipto Rahardjo sebagai middle theory, dan teori pertanggungjawaban pelanggaran HAM berat, khususnya terkait dengan Undang-Undang No. 26 Tahun 2000 sebagai teori aplikatifnya. Hasil penelitian menunjukkan bahwa pelanggaran aturan dalam proses pertanggungjawaban pelanggar HAM berat, khususnya dalam kasus penghilangan paksa, berkaitan dengan 'rule-bending' negatif, yang melibatkan budaya legalisme otokratis. Hukum progresif dan keadilan transisi memberikan solusi terhadap apa yang ditunjukkan penelitian ini, yaitu kebaruan penelitian, sebagai model hukum transformatif yang melingkupi sistem hukum dan individu, khususnya aparat penegak hukum, untuk bersikap progresif: memiliki rasa kasih sayang, empati, dan berani menuntut pertanggungjawaban para pelanggar hak asasi manusia berat di masa lalu.

Keywords: pelanggaran hak asasi manusia berat; pelanggaran aturan; pertanggungjawaban; pengadilan hak asasi manusia; pengadilan pidana internasional

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Pengakuan Hukum terhadap Perkosaan terhadap Laki-Laki di Indonesia: Persetujuan, Non-Diskriminasi, dan Batasan Pendekatan Hukum Netral Gender

Jurnal HAM, Volume 17, Nomor 2, Agustus 2026, hal. 125-152

Perkosaan dapat terjadi pada siapa saja termasuk laki-laki, sehingga diperlukan perlindungan hukum untuk memberikan hak yang sama sebagai manusia. Hukum di Indonesia pernah hanya mengatur secara eksplisit mengenai perkosaan dengan perspektif korban hanya perempuan, dalam pasal 285 KUHP dengan frasa "seorang wanita". Ketentuan tersebut tidak mencerminkan equality, dan berimplikasi pada ketidakadilan hukum bagi laki-laki yang menjadi korban perkosaan. Saat ini, hukum Indonesia hanya mengakui laki-laki sebagai pelaku perkosaan, secara tidak langsung menciptakan unsur diskriminasi dalam sistem hukum pidana. Jenis metode penelitian sosio-legal, menggunakan pendekatan perundang-undangan dan perbandingan hukum. Pengaturan hukum mengenai perkosaan terhadap laki-laki berperan penting dalam menentukan perlindungan hukum yang adil bagi laki-laki korban perkosaan. Pengaturan hukum perkosaan masih belum mampu memberikan perlindungan hak asasi manusia dan penegakan hukum pada korban laki-laki. Oleh karena itu, diperlukan perubahan yang inklusif bagi korban tanpa memandang perspektif jenis kelamin, sehingga dapat membuka peluang penegakan hukum dan pemenuhan hak asasi manusia. Penting merekontruksi hukum lebih inklusif dan tidak bias gender. Upaya tersebut dapat dilakukan dengan menyempurnakan pasal 473 tentang perkosaan dalam KUHP baru, melalui perbandingan hukum Sexual Offences Act 2003 di Inggris. Diperlukan perluasan makna keadilan dan hak asasi manusia dalam hukum Indonesia, serta makna konsen, pemaksaan, atau tanpa persetujuan. Tujuannya agar hukum tidak lagi berpihak pada stereotip jenis kelamin tertemtu melainkan pada perlindungan korban secara universal. Membuka ruang kesetaraan yang mengakui bahwa laki-laki juga dapat menjadi korban, baik dalam ranah substansi, struktur, dan kultur hukum yang ada menjadi sistem yang setara.

Keywords: persetujuan (consent); hukum netral gender; non-diskriminasi; perkosaan laki-laki; reformasi hukum pidana

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Formalisme Hakim Menguji Pengakuan Bebas Dari Paksaan:
Reduksi Non-Derogable Rights pada Proses Peradilan Pasca Berlakunya KUHAP 2025

Jurnal HAM, Volume 17, Nomor 2, Agustus 2026, hal. 153-172

Pemberlakuan Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP) menghadirkan mekanisme pengakuan Terdakwa dalam persidangan sebagaimana diatur dalam Pasal 205, yang mensyaratkan Hakim menilai enam unsur sebelum mengalihkan pemeriksaan ke acara singkat, termasuk unsur pengakuan tidak disebabkan oleh tekanan, paksaan, atau penyiksaan selama proses penyidikan dan penuntutan. Ketentuan ini secara tekstual sejalan dengan Pasal 33 Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia dan Pasal 15 Convention Against Torture, namun mekanisme pengujiannya bertumpu pada pemeriksaan di persidangan berdasarkan berkas perkara yang dihasilkan oleh aparat yang perilakunya justru sedang diuji. Artikel ini bertujuan menganalisis konstruksi normatif jaminan tersebut dan mendeskripsikan sejauh mana pertimbangan hukum dalam putusan pengadilan pasca berlakunya KUHAP mencerminkan pemeriksaan substantif atas unsur tersebut. Penelitian menggunakan metode yuridis normatif, dengan menelaah putusan pengadilan negeri yang menerapkan Pasal 205 KUHAP sebagai bahan hukum yang tersedia dalam Direktori Putusan Mahkamah Agung. Kerangka indikator formil-substantif yang dikembangkan penulis untuk membaca pola penalaran Hakim sebagaimana tertuang dalam putusan. Analisis enam putusan yang menerapkan Pasal 205 menunjukkan bahwa dua putusan sama sekali tidak memuat pertimbangan eksplisit atas unsur bebas dari paksaan, tiga putusan hanya menyatakan seluruh syarat terpenuhi tanpa menguraikan dasarnya (formil), satu putusan menyebut unsur tersebut secara eksplisit tanpa uraian bukti pendukung (semi-formil), dan tidak satu pun menunjukkan pemeriksaan yang substantif. Artikel ini diharapkan berkontribusi mengisi kekosongan kajian yang selama ini terfokus pada konstruksi normatif pengakuan bersalah tanpa menelusuri praktik peradilannya, sekaligus menawarkan kerangka analisis yang dapat digunakan untuk memantau implementasi ketentuan serupa di masa mendatang.

Keywords: hak asasi manusia; KUHAP; pengakuan bersalah; penyiksaan; putusan pengadilan

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Dilema Rempang Eco City: Reorientasi Tanggung Jawab Negara dan Korporasi Berbasis Keadilan Environmental, Social and Governance

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Investasi berbasis Environmental, Social, and Governance (ESG) berkembang pesat secara global, memaksa rekonstruksi hubungan antara aktivitas korporasi dengan hak-hak sosiokultural masyarakat lokal. Pencabutan status Proyek Strategis Nasional (PSN) Rempang Eco City berdasarkan Peraturan Presiden Nomor 12 Tahun 2025 memicu transisi hukum yang masif serta kekosongan regulasi pembiayaan pemukiman kembali (resettlement). Penelitian ini menganalisis implikasi yuridis skema pemukiman kembali pasca-PSN, mengkritisi kebijakan "Transmigrasi Lokal", serta merumuskan model tanggung jawab terintegrasi berbasis pengarusutamaan HAM. Penelitian ini menggunakan metode penelitian hukum doktrinal (normatif) yang dipadukan dengan desain penelitian kualitatif deskriptif-analitis berbasis pada kerangka pemikiran John W. Creswell, melalui sinkronisasi regulasi agraria dan keberlanjutan. Hasil penelitian membuktikan bahwa pasca-pencabutan PSN, sengketa lahan kembali ke koridor hukum perdata murni tanpa privilese koersif negara. Program "Transmigrasi Lokal" terindikasi mengandung cacat logika administratif (administrative fallacy) serta berpotensi mencederai kedaulatan ekologis nelayan pesisir. Melalui POJK Nomor 51/POJK.03/2017, ESG mentransformasikan etika bisnis menjadi kewajiban kepatuhan hukum yang memaksa PT MEG selaku pemegang hak konsesi mengadopsi pilar sosial-ekologis demi memperoleh Social License to Operate. Pengarusutamaan HAM mengharuskan negara menyinkronkan fungsi pengawasannya dengan kewajiban perdata korporasi. Kementerian Transmigrasi disarankan mengevaluasi program transmigrasi lokal dan mengedepankan ganti rugi yang layak serta musyawarah substantif berdasarkan UU Nomor 2 Tahun 2012. Otoritas Jasa Keuangan perlu memperketat audit laporan keberlanjutan guna memitigasi risiko greenwashing.

Keywords: environmental social governance; bisnis dan hak asasi manusia; transmigrasi lokal; rempang eco city; pemukiman kembali