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Foreword

Praise be to Allah SWT, who has given His mercy and grace to all of us so that the Editor can publish Jurnal HAM Vol. 15 No. 3, December 2024. It is with great pride and enthusiasm that we present this edition, featuring five articles that delve into pressing human rights issues from diverse contexts and regions. This edition is particularly special as it includes contributions from authors based in Cambodia, Nepal, and Indonesia, specifically from East Nusa Tenggara (NTT) and Kalimantan Timur, offering invaluable perspectives directly rooted in the areas of their research.

This edition opens with an article from Cambodia, which examines the legacy of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and its contributions to building national capacity for fair trial rights, demonstrating that when the dust settles, the lessons learned can stand the test of time. From Nepal, another study explores the country's mental health framework, analyzing the barriers faced by individuals with psychosocial disabilities and advocating for a shift to a robust, rights-based approach. These articles emphasize the critical need for transformative practices in the pursuit of justice, proving that justice delayed is justice denied and that the time is ripe for innovative solutions.

Meanwhile, three articles from Indonesia offer significant insights into local human rights challenges. A study on the prospects of adopting international individual communications procedures highlights the potential benefits for Indonesia in ratifying key international protocols, reflecting the adage that a stitch in time saves nine. From East Nusa Tenggara (NTT), an article discusses the theology of migration, illustrating how faith can move mountains by addressing human trafficking through a theological and interdisciplinary lens. Lastly, a study from Kalimantan Timur critically examines the marginalization of Indigenous peoples in the development of the Nusantara Capital and proposes an affirmative action model to safeguard their rights and ensure equitable participation in policymaking.

This edition also marks a significant transformation within our institutional landscape. Following the reorganization of the Ministry of Law and Human Rights of the Republic of Indonesia into the Ministry of Law of the Republic of Indonesia, the Law and Human Rights Policy Strategy Agency has also evolved into the Policy Strategy Agency of Law. This transition reflects our shared commitment to advancing legal and policy frameworks that uphold justice and human rights.

Finally, we would like to thank the Head of the Policy Strategy Agency of Law, the Ministry of Law of the Republic of Indonesia, for his support in publishing this edition. We extend our deepest appreciation to the authors and reviewers whose scholarly contributions enrich the discourse on human rights, fostering dialogue, understanding, and, ultimately, progress towards a more just and equitable world. We are particularly proud to welcome authors from across Cambodia, Nepal, and Indonesia, who bring with them deep insights and firsthand knowledge of their respective regions. Their research exemplifies that the pen is mightier than the sword, showcasing the power of localized expertise in addressing global human rights challenges. We hope that this edition inspires meaningful dialogue and contributes to the advancement of human rights in Indonesia and globally.

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Somaly Kum (the Center for the Study of Humanitarian Law (CSHL), Cambodia)

The Legacy of Cambodia's Hybrid Court: Promoting Fair Trial Rights?

Jurnal HAM, Volume 15, Number 3, December 2024, page 159-168

The mandate of the Extraordinary Chambers in the Courts of Cambodia (ECCC) concluded in 2022, marking the end of its nearly two-decade presence in Cambodia. Established as a hybrid court through a collaboration between the Cambodian government and the United Nations, the ECCC operated under a unique framework combining foreign and domestic laws, personnel, and judges. While the caseload of the court ended in early 2022, there are remaining legacies for Cambodians. This research investigates the legacy of the ECCC concerning fair trial rights and examines how national staff apply their experiences from the ECCC in the national courts. The article relies on document analysis and in-depth interviews with seven former and current Cambodian domestic court staff who worked at the ECCC to analyze three elements of fair trial rights: the right to adequate time and facilities to prepare a defense, the right to legal representation and to be present at trial, and the right to presumption of innocence. This paper argues that the legacy of the ECCC lies in its contribution to build the national staff's capacity on fair trial rights in domestic courts in Cambodia. However, significant challenges remain, as the fair trial rights envisioned and put in place in the ECCC cannot be currently delivered by Cambodian domestic judicial system.

Keywords: *ECCC; transitional justice; judiciary*

Abdul Munif Ashri, Heribertus Jaka Triyana (Fakultas Hukum Universitas Hasanuddin; Fakultas Hukum Universitas Gadjah Mada)

Considering the Prospects of Human Rights Individual Communications Procedures: Legal Politics and Potential Implications for Indonesia

Jurnal HAM, Volume 15, Number 3, December 2024, page 169-186

The individual communications procedure is a vital mechanism in international human rights law that enables victims to seek remedies when domestic legal venues have been exhausted or failed to deliver justice. Although Indonesia has acceded to almost all core international human rights treaties, its individual communications procedures have yet to be accepted. This study investigates the Indonesian Government's human rights legal policy toward individual communications procedures acceptance through the ratification/accession of the ICCPR First Optional Protocol and ICESCR Optional Protocol, as well as analyzes the potential implications of such acceptance. This study utilizes a normative legal methodology coupled with interdisciplinary and conceptual approaches. In addition to analyzing legal materials, interviews were conducted with scholars, NGO activist, victim, and former Commissioner of Indonesia's National Human Rights Commission to deepen the analysis. The findings reveal the Government's lack of political will to accept individual communications procedures due to a tendency to avoid adjudicatory human rights accountability mechanisms and the avoidance of possible compliance costs, such as financial, reputational, and political burdens. Furthermore, this study demonstrates that these procedures' acceptance has potential implications for opening access to justice for victims, providing strategic litigation channels, and facilitating interaction between treaty bodies and the national judiciary regarding the development of interpretations of human rights through judicial dialogue. The Government should consider ratifying/acceding the ICCPR and ICESCR Optional Protocols to strengthen the domestic human rights protection infrastructure and enhance its reputation as a promoter of human rights.

Keywords: *individual communications procedures; international human rights law; human rights legal policy*

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Isakh Bendris Oematan (Gereja Masehi Injili di Timor, Indonesia)

Theology of Migration: A Theoretical and Theological Contribution to the Understanding of Religion in the Fight Against Human Trafficking in East Nusa Tenggara (NTT)

Jurnal HAM, Volume 15, Number 3, December 2024, page 187-204

Theology of Migration represents a form of praxis that elucidates the relationship between theology (religion) and social reality, with a particular focus on migration. This relationship is characterized by intricate, intertwining, and constructive engagement. This leads to the question of whether migration theology can address the issue of migrants who eventually become involved in the criminal act of trafficking in persons (TPPO). Since 2016, NTT has been identified as a key area of concern in the context of human trafficking. Recent research on the phenomenon of human trafficking has identified a number of socio-structural issues that contribute to its prevalence, including deficiencies in education, poverty, patriarchal structures, feudalistic systems, and the scarcity of natural and human resources. The objective of this paper is to demonstrate that religion can play a significant role in the fight against TPPO in NTT. As an integral aspect of human existence, religion can serve as a foundation for efforts to provide crucial insights into the phenomenon of migration. Migration theology endeavors to reflect the phenomenon of migration in the light of public theology, thereby providing a basis for defense. This is then realized in practical actions against TPPO, with the objective of actively involving religion. In this context, migration theology will undertake a comprehensive examination of the various factors underlying the migration of people in NTT. It will then engage in interdisciplinary dialogue with the results obtained, particularly with regard to the teachings of Christianity concerning the phenomenon of migration (in terms of tradition, doctrine, the Bible, and theology). The latter can be enhanced with additional theological perspectives, particularly those pertaining to interfaith dialogue, in order to develop a comprehensive theological perspective on migration and to foster a distinctive theological approach to the migration patterns of the people of NTT. This research is grounded in a literature review employing a professional correlation approach, wherein Scripture, theological-dogmatic tradition, and socio-cultural human experience converge and engage in a dynamic interplay, ultimately manifesting itself in theological and practical terms.

Keywords: migration; human trafficking; religion; theology of migration; crucified migrants

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Bidya Maharjan (Mahidol University, Thailand)

Identifying Challenges to the Equal Realization of Human Rights for Individuals with Psychosocial Disability in Nepal

Jurnal HAM, Volume 15, Number 3, December 2024, page 205-218

Nepal is currently facing a severe mental health crisis characterized by a significant prevalence of mental illness that remains largely unaddressed. The issue is exacerbated by pervasive social stigma, lack of awareness, and insufficient political commitment, pushing mental health to the bottom of the political agenda. In Nepal, mental health treatment predominantly focuses on biomedical interventions, mainly ignoring the human rights aspects, highlighting the crucial need for a paradigm shift in approach. The enactment of the Convention on the Rights of Persons with Disabilities (CRPD) on June 6, 2010, presents an opportunity for a transformative shift in Nepal's approach to mental health. This research investigates the barriers within Nepal's rights-based mental health framework, drawing insights from individuals with psychosocial disabilities, their families, policymakers, legal experts, and NGO representatives. It features four case studies that highlight the challenges these individuals face, and the roles played by their families and communities in providing care. The objective is to provide insights into the daily realities of community members in Nepal. In summary, the study highlights the importance of adopting a robust human rights-based approach to quality practice. Such an approach, which fosters trust in engaging individuals with psychosocial disabilities, their families, the community, and mental health service providers, is not merely a theoretical concept but a vital requirement for enhancing mental health practices in Nepal.

Keywords: *psychosocial disabilities; human rights approach; Nepal mental healthcare; CRPD implementation; mental health policy*

Haris Retno Susmiyati, Grizelda, Wiwik Harjanti, Alfian, Aryo Subroto (Fakultas Hukum Universitas Mulawarman)

Affirmative Action Model For The Rights Fulfillment Of Indigenous Peoples In The Nusantara Capital (IKN) Area

Jurnal HAM, Volume 15, Number 3, December 2024, page 219-238

The decision to build a new capital on the Kalimantan Island called Nusantara caused various conflicts, such as the neglect and marginalization of indigenous peoples and the ignoring of their certainty of access and meaningful participation. This paper explains how the substance of the Nusantara Capital development regulation is to provide full protection to Indigenous peoples or vice versa, how it impacts the protection of Indigenous people's rights, as well as how the affirmative action model fulfills the rights of Indigenous peoples in the Nusantara Capital area. Through a socio-legal approach as the method, the results of the study found that the constitution has regulated the recognition of indigenous peoples, but in the substance of regulations related to the Nusantara capital, the phrases that regulate are very weak. The phrases used do not explicitly ensure the protection of the rights of indigenous peoples, which has an impact on various neglect of the existence of indigenous peoples. As a result, a model of affirmative action is needed for indigenous peoples in the regulation of the Nusantara capital. This includes ensuring access for indigenous peoples to be involved in policymaking. Furthermore, transparency of information in the development of the Nusantara capital is important to formulate policies that accommodate the protection and fulfillment of the rights of indigenous peoples. It is important to ensure the recognition of indigenous peoples and their living space through an affirmative action model regulated by the head of the Nusantara capital authority.

Keywords: *affirmative action; indigenous peoples; Nusantara capital area*

***Kata Kunci bersumber dari Artikel.
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Somaly Kum (Pusat Studi Hukum Kemanusiaan (CSHL), Kamboja)

Legacy Pengadilan Hibrida di Kamboja: Memajukan Peradilan yang Bebas dan Tidak Memihak?

Jurnal HAM, Volume 15, Nomor 3, Desember 2024, hal. 159-168

Misi Extraordinary Chambers in the Courts of Cambodia (ECCC) berakhir pada tahun 2022, setelah hadir di Kamboja selama hampir dua dekade. Pengadilan ini dikembangkan sebagai pengadilan hibrida oleh Pemerintah Kamboja dan Perserikatan Bangsa-Bangsa. Pengadilan ini menggunakan kombinasi hukum, staf, dan hakim internasional dan domestik. Meskipun telah berakhir pada awal tahun 2022, masih ada warisan yang disisakan bagi warga Kamboja. Penelitian ini mempertanyakan apa legacy ECCC terkait hak peradilan yang bebas dan tidak memihak dan bagaimana staf nasional ECCC menerapkan pengalaman mereka dari ECCC di pengadilan nasional? Artikel ini menggunakan analisis dokumen dan wawancara mendalam dengan tujuh mantan dan staf pengadilan domestik Kamboja saat ini yang memiliki pengalaman di ECCC untuk menganalisis tiga elemen hak atas peradilan yang bebas dan tidak memihak: hak atas waktu dan fasilitas yang memadai dalam mempersiapkan pembelaan, hak atas perwakilan hukum dan untuk hadir di persidangan, serta hak atas praduga tak bersalah. Artikel ini berpendapat bahwa warisan ECCC adalah kontribusinya dalam membangun kapasitas staf nasional terkait hak atas peradilan yang bebas dan tidak memihak di pengadilan domestik di Kamboja. Namun, tantangan yang signifikan tetap ada, karena hak atas peradilan yang bebas dan tidak memihak yang dibayangkan dan ditetapkan dalam ECCC saat ini tidak dapat diwujudkan oleh pengadilan dalam negeri.

Kata Kunci: ECCC; keadilan transisional; peradilan

Abdul Munif Ashri, Heribertus Jaka Triyana (Fakultas Hukum Universitas Hasanuddin; Fakultas Hukum Universitas Gadjah Mada)

Menimbang Prospek Komunikasi Individual HAM: Politik Hukum dan Implikasi Potensial Bagi Indonesia

Jurnal HAM, Volume 15, Nomor 3, Desember 2024, hal. 169-186

Prosedur komunikasi individual merupakan salah satu mekanisme penting dalam hukum hak asasi manusia (HAM) internasional yang memungkinkan korban untuk mengupayakan pemulihan ketika sarana hukum domestik telah tuntas atau gagal bekerja dalam memberikan keadilan. Walaupun Indonesia telah mengikutsertakan diri pada hampir seluruh perjanjian HAM internasional inti, prosedur komunikasi individualnya sampai sekarang belum kunjung diterima. Studi ini mengkaji politik HAM Pemerintah Indonesia terhadap prospek penerimaan prosedur komunikasi individual, khususnya melalui ratifikasi/aksesi Protokol Opsional ICCPR Pertama dan Protokol Opsional ICESCR, sekaligus menganalisis implikasi potensial dari penerimaan tersebut. Studi ini mengandalkan metode penelitian hukum normatif dengan pendekatan interdisipliner dan konseptual. Selain penelaahan atas bahan-bahan hukum, wawancara kepada akademisi, pegiat organisasi nonpemerintah, korban, dan mantan Komisioner Komisi Nasional HAM Republik Indonesia juga dilakukan demi memperdalam analisis. Kesimpulan studi menunjukkan tidak terdapatnya kehendak politik Pemerintah Indonesia untuk menerima prosedur komunikasi individual karena adanya tendensi penghindaran terhadap mekanisme akuntabilitas HAM internasional yang berkarakter adjudikasi serta penghindaran ongkos kepatuhan berupa beban finansial, reputasi dan politik yang mungkin timbul. Studi ini pun mendemonstrasikan bahwa akseptasi prosedur komunikasi individual dapat membuka akses keadilan bagi korban, menyediakan sarana litigasi strategis, dan memfasilitasi interaksi antara badan perjanjian dan sistem peradilan nasional berkenaan pengembangan interpretasi norma HAM melalui dialog yudisial. Pemerintah Indonesia perlu mempertimbangkan ratifikasi/aksesi Protokol Opsional ICCPR dan ICESCR demi memperkuat infrastruktur perlindungan HAM serta meningkatkan reputasi sebagai promotor HAM.

Kata Kunci: prosedur komunikasi individual; hukum hak asasi manusia internasional; politik hukum HAM

*Kata Kunci bersumber dari Artikel.
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Isakh Bendris Oematan (*Gereja Masehi Injili di Timor, Indonesia*)

Teologi Migrasi: Kontribusi Teoritis dan Teologis terhadap Pemahaman Agama dalam Upaya Melawan Perdagangan Manusia di Nusa Tenggara Timur (NTT)

Jurnal HAM, Volume 15, Nomor 3, Desember 2024, hal. 187-204

ABSTRAK: Teologi Migrasi merupakan sebuah bentuk praksis yang menjelaskan hubungan antara teologi (agama) dan realitas sosial, dengan fokus khusus pada migrasi. Hubungan ini ditandai dengan keterlibatan yang rumit, saling terkait, dan konstruktif. Hal ini membawa pada pertanyaan apakah teologi migrasi dapat menjawab persoalan migran yang pada akhirnya terlibat dalam tindak pidana perdagangan orang (TPPO). Sejak tahun 2016, NTT telah diidentifikasi sebagai daerah yang menjadi perhatian utama dalam konteks perdagangan orang. Penelitian terbaru tentang fenomena perdagangan orang telah mengidentifikasi sejumlah masalah sosial-struktural yang berkontribusi terhadap prevalensi perdagangan orang, termasuk kekurangan pendidikan, kemiskinan, struktur patriarki, sistem feodalistik, dan kelangkaan sumber daya alam dan sumber daya manusia. Tujuan dari tulisan ini adalah untuk menunjukkan bahwa agama dapat memainkan peran penting dalam memerangi TPPO di NTT. Sebagai aspek integral dari eksistensi manusia, agama dapat menjadi landasan bagi upaya untuk memberikan pemahaman yang krusial terhadap fenomena migrasi. Teologi migrasi berupaya merefleksikan fenomena migrasi dalam terang teologi publik, sehingga menjadi dasar pembelaan. Hal ini kemudian diwujudkan dalam aksi-aksi praktis melawan TPPO, dengan melibatkan agama secara aktif. Dalam konteks ini, teologi migrasi akan melakukan telaah komprehensif terhadap berbagai faktor yang mendasari migrasi masyarakat di NTT. Kemudian akan melakukan dialog interdisipliner dengan hasil yang diperoleh, terutama yang berkaitan dengan ajaran agama Kristen mengenai fenomena migrasi (dari segi tradisi, doktrin, Alkitab, dan teologi). Hal ini dapat dilengkapi dengan perspektif teologis lainnya, terutama yang berkaitan dengan dialog antar agama, untuk mengembangkan perspektif teologis yang komprehensif tentang migrasi dan untuk menumbuhkan pendekatan teologis yang khas terhadap pola migrasi masyarakat NTT. Penelitian ini didasarkan pada tinjauan literatur dengan menggunakan pendekatan korelasi prosedural, di mana Alkitab, tradisi teologis-dogmatis, dan pengalaman sosial-budaya manusia bertemu dan terlibat dalam interaksi yang dinamis, yang pada akhirnya memanifestasikan dirinya dalam istilah-istilah teologis dan praktis.

Kata Kunci: migrasi; perdagangan manusia; agama; teologi migrasi; migran yang disalibkan

Bidya Maharjan (Mahidol University, Thailand)

Identifikasi Tantangan dalam Mewujudkan Kesenjangan Hak Asasi Manusia bagi Penyandang Disabilitas Psikososial di Nepal

Jurnal HAM, Volume 15, Nomor 3, Desember 2024, hal. 205-218

Nepal tengah menghadapi krisis kesehatan mental yang parah, yang ditandai dengan tingginya prevalensi penyakit mental yang sebagian besar belum ditangani. Masalah ini diperburuk oleh stigma sosial yang meluas, kurangnya kesadaran, dan rendahnya komitmen politik, sehingga kesehatan mental tidak lagi menjadi agenda politik. Di Nepal, perawatan kesehatan mental yang sebagian besar berfokus pada intervensi biomedis dan mengabaikan aspek hak asasi manusia, menunjukkan pentingnya kebutuhan perubahan paradigma. Pemberlakuan Konvensi Hak-Hak Penyandang Disabilitas (CRPD) pada tanggal 6 Juni 2001, menghadirkan peluang untuk mengubah pendekatan Nepal terhadap kesehatan mental secara transformatif. Penelitian ini menganalisis hambatan dalam pendekatan kesehatan mental berbasis hak di Nepal, dengan dalam perspektif para penyandang disabilitas psikososial dan keluarganya, serta para pembuat kebijakan, pakar hukum, dan LSM. Penelitian ini menyajikan empat studi kasus yang menyoroti tantangan yang dihadapi oleh para penyandang disabilitas psikososial serta peran keluarga dan komunitas dalam memberikan perawatan. Tujuannya adalah untuk memberikan wawasan tentang realitas sehari-hari anggota komunitas di Nepal. Penelitian ini menyoroti pentingnya mengadopsi pendekatan berbasis hak asasi manusia yang kuat untuk praktik yang berkualitas. Pendekatan semacam itu, yang menumbuhkan kepercayaan dalam melibatkan individu dengan disabilitas psikososial, keluarga mereka, komunitas, dan penyedia layanan kesehatan mental, bukan sekadar konsep teoritis tetapi persyaratan penting untuk meningkatkan praktik kesehatan mental di Nepal.

Kata Kunci: disabilitas psikososial; pendekatan hak asasi manusia; perawatan kesehatan mental Nepal; implementasi CRPD; kebijakan kesehatan mental

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Haris Retno Susmiyati, Grizelda, Wiwik Harjanti, Alfian, Aryo Subroto (Fakultas Hukum Universitas Mulawarman)

Model Aksi Afirmatif Pemenuhan Hak Masyarakat Adat di Kawasan Ibu Kota Nusantara (IKN)

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Keputusan untuk membangun ibu kota baru di Pulau Kalimantan yang disebut Nusantara menimbulkan berbagai konflik, seperti penelantaran dan marginalisasi masyarakat adat serta pengabaian kepastian akses dan partisipasi yang bermakna bagi mereka. Tulisan ini menjelaskan bagaimana substansi pengaturan pembangunan Ibu Kota Nusantara memberikan perlindungan penuh kepada masyarakat adat atau sebaliknya, bagaimana dampaknya terhadap perlindungan hak-hak masyarakat adat, serta bagaimana model tindakan afirmatif pemenuhan hak-hak masyarakat adat di kawasan Ibu Kota Nusantara. Melalui pendekatan sosio-legal sebagai metodenya, hasil penelitian menemukan bahwa konstitusi telah mengatur pengakuan masyarakat adat, namun dalam substansi pengaturan terkait Ibu Kota Nusantara, frasa yang mengatur sangat lemah. Frasa-frasa yang digunakan tidak secara eksplisit menjamin perlindungan hak-hak masyarakat adat, yang mengakibatkan pengabaian dan marginalisasi masyarakat adat. Oleh karena itu, diperlukan model tindakan afirmatif bagi masyarakat adat dalam pengaturan Ibu Kota Nusantara. Hal ini mencakup jaminan akses bagi masyarakat adat untuk terlibat dalam pengambilan kebijakan. Selain itu, transparansi informasi dalam pembangunan Ibu Kota Nusantara penting untuk merumuskan kebijakan yang secara efektif mengakomodasi perlindungan dan pemenuhan hak-hak masyarakat adat. Penting juga untuk menjamin pengakuan terhadap masyarakat adat dan ruang hidupnya melalui model tindakan afirmatif yang diatur oleh kepala otoritas ibu kota nusantara.

Kata Kunci: tindakan afirmatif; masyarakat adat; kawasan ibu kota nusantara