

# The Effectiveness of the Legal System in Guaranteeing Equal Rights of Minority Groups in Constitutional Structures

Muchammad Catur Rizky, Adi Herisasono, Rommy Hardyansah, Pratolo Saktiawan, Rio Saputra

*Sunan Giri University of Surabaya, Indonesia*

## ARTICLE INFO

### **Article history:**

Received 3 March 2021

Revised 11 April 2021

Accepted 19 May 2021

### **Key words:**

Legal protection,  
Minority groups,  
Discrimination,  
Constitutional,  
Human rights,  
Social justice,  
Pluralism.

## ABSTRACT

*This research discusses the effectiveness of the legal system in guaranteeing the rights of minority groups and how country policies can prevent substantive discrimination. Using a literature study approach with qualitative analysis, this research explores the legal frameworks in place in various constitutional systems and evaluates their consistency with the principle of non-discrimination. The findings show that legal protections are only meaningful if there are mechanisms in place that are able to enforce norms in a justice and responsive manner to social diversity. Formal regulations are often insufficient when they are not accompanied by institutional alignment to the real value of equality. This research highlights the importance of synergy between the legislature, judiciary and civil society to ensure minority protection is not symbolic. Legal education that promotes multicultural values and plurality is seen as essential to forming country apparatus that is sensitive to the needs of vulnerable groups. This research offers a critical reflection on legal structures that have been more focused on uniformity than diversity-based justice. This study contributes to the strengthening of legal reform in the constitutional system by placing substantive justice as the main point of departure.*

## INTRODUCTION

The debate on the position of minority groups in the country system has always been one of the main issues in the discourse on justice and equal human rights. In plural societies, the existence of communities with smaller populations, whether for reasons of ethnicity, religion, gender, sexual orientation, or social status, requires normative guarantees so that their existence is not suppressed by the majority. Legal becomes the main tool in upholding the principle of justice, because through juridical mechanisms, the country is able to set standards of equal treatment for all citizens. The country has a responsibility to ensure that the legal system is able to serve as a protective umbrella. It is important to examine how legal instruments in the constitutional structure respond to and regulate the relationship between minority groups and country power (Mukminto & Marwan, 2019).

In many legal systems, the protection of minority groups is enshrined in constitutions and derivative law. These instruments include guarantees of non-discrimination, recognition of cultural and religious

rights, and protection from violence and oppression. In reality, various cases show that the existence of legal instruments does not always guarantee the full fulfillment of these rights. Herein lies the tension between normative legal and its implementation. In certain situations, the legal can be used as a tool to justify the dominance of the majority group if it is not accompanied by oversight and alignment with the principles of substantive justice (Mutatkar, 2011).

In modern systems of constitutional, inclusive constitutional design is an important basis for the protection of minority groups. Inclusive constitutional design incorporates the principle of equality formally and contains substantive mechanisms to address structural inequalities. Countries with a high commitment to democracy and human rights usually have a more progressive legal framework to guarantee the rights of such groups. Different interpretations of the principle of equality in legal practice often led to bias, both at the judicial level and in administrative policy. This suggests that the existence of legal alone

\* Corresponding author, email address: [dr.rommyhardyansah@gmail.com](mailto:dr.rommyhardyansah@gmail.com)

is not enough, but must be accompanied by governance that strengthens the values of protecting the weak (Sportel, 2021).

This situation encourages the need for a systematic study of the relationship between legal instruments, country institutions, and minority communities. This kind of research is important so that the regulations set are not abstract and symbolic, but are able to answer concrete needs in society. Through literature studies, it is possible to trace the development of legal protection norms and practices in various country systems, and how they shape the landscape of country treatment of social diversity (Lamarr, 2018).

The main problem in the protection of minority groups lies in the inequality between the content of the legal system and the reality of implementation on the field. While the principle of non-discrimination has been widely adopted in national and international legal documents, inequalities are still often found, both in access to justice and distribution of public services. Kymlicka (2007) emphasizes that policies that do not take into account cultural differences will only result in pseudo-equality, which does not address the specific needs of minority groups.

Another problem arises from the lack of institutional commitment in proactively following up on these protections. Banks (2004) points out that legal protection is often hampered by structural biases and attitudes of country officials who still view minorities as groups that must be normatively "integrated" into the majority culture. As a result, available legal mechanisms are insensitive to the discriminatory experiences that minorities face in their daily lives.

The third weakness is the inconsistency between different levels of law and regulations. In some countries, constitution guarantee equality, but sectoral laws enable covert discrimination through policies on worship permits, education budgets, or political representation. Parekh (2000) states that if the legal system lacks an evaluative framework for the social impact of policies, then discrimination can take place in a form that is legally valid, but socially injustice.

This issue needs to be observed as it relates to social stability and the integrity of a diverse country. When minority groups do not feel equally protected, the potential for social tension increases and trust in the legal system decreases. The protection of minorities reflects the extent to which the country is able to guarantee justice for all citizens without identity-based discrimination.

The study of legal protection of minority groups also has strategic value for the development of an adaptive and progressive legal system. By understanding the inequality between norms and practices, the judicial

system and policymakers can reform based on empirical findings and a more contextualized approach to the needs of vulnerable groups.

This research aims to critically examine the effectiveness of legal instruments in the country system in guaranteeing the rights of minority groups and analyze the extent to which public policies produced by the country are able to prevent structural discrimination. This research is expected to provide a conceptual understanding that strengthens legal reform efforts and the formulation of more inclusive policies, as well as expanding the discourse on justice for vulnerable groups in the national legal system.

## RESEARCH METHOD

This research uses the literature study method as the main approach in exploring theories, legal principles, and policies related to the protection of minority groups. The literature study provides a broad space to analyze legal documents, scientific research, reports of international institutions, and academic articles that discuss the relationship between the legal system and the protection of vulnerable groups. According to Creswell (2007), a document-based qualitative approach is able to explore meaning contextually and develop theoretical constructions based on in-depth interpretation of written sources.

The analysis was conducted through the stages of literature selection, issue categorization, and critical interpretation of document content. This research refers to a systematic procedure as described by Neuman (2006), namely by formulating a research question, collecting relevant texts, and synthesizing the main findings. The literature search was conducted by considering the social setting, legal structure, and normative approaches applicable in various countries. The results of the research are expected to enrich the understanding of anti-discrimination legal and policy practices comparatively.

## RESULT AND DISCUSSION

The effectiveness of a legal system in guaranteeing the rights of minority groups cannot be separated from the constitutional structure that regulates the principle of equality. Progressive constitutions usually provide for the protection of all citizens without discrimination, but the operational meaning of this principle is often distorted in practice. In some cases, as Thornberry (1991) points out, even constitutions that explicitly guarantee minority rights still allow for inequalities to arise due to legal interpretations that are biased towards the dominance of the majority group.

The implementation of the principle of non-discrimination relies heavily on legal instruments implemented under the constitutional framework. Countries that enact explicit anti-discrimination laws, such as Canada and Germany, show significant progress in minority protection. Hannum (1990) notes that the effectiveness of such legal is determined not only by the normative substance, but also by the availability of complaint mechanisms, independent judiciaries, and the active participation of affected groups.

Public policies designed to counteract discrimination require support from the administrative and legislative sectors. In a study by de Witte (2000), it was found that legal protection of minorities is effective when there is an institutional structure that actively promotes the fulfillment of rights - rather than simply waiting for violations to be reported. In other words, the country must be active in preventing discrimination, not passive in dealing with its effects.

Political representation is an important indicator of the extent to which the legal favors minorities. When these groups are accommodated in the representative system, the policies that emerge tend to be more responsive to their needs. Kymlicka (2007) points out that recognizing cultural diversity in the design of political systems can strengthen the legal position of minorities and reduce the dominance of majority values that are often considered as common standards.

Problems arise when the legal system is formally neutral but structurally biased. In a study conducted by Rehman (2000), it was found that the principle of legal universality can disguise the special needs of certain groups and create hidden discrimination. In this condition, the legal, which is supposed to be an instrument of justice, actually reinforces inequality because it ignores differences in social and cultural needs.

The complexity of legal protection for minority groups is even more apparent when sectoral regulations are not aligned with constitutional norms. Many cases show that while the constitution guarantees freedom of religion or opinion, technical regulations at the regional level restrict the expression of minority groups under the pretext of security or public order. Clarke (1995) calls this a form of "legal containment," where the legal is used to restrict rather than protect.

The effectiveness of legal protection is also strongly influenced by the independence of the judiciary. In countries where the judiciary is not free from political intervention or majority pressure, substantive justice is difficult to realize. Hirschl (2004) explains that the rule of law must be

accompanied by a guarantee that legal institutions are not subject to political hegemony that suppresses minority groups through populist policies.

Internationally, national legal systems often come under pressure from multilateral institutions to conform to human rights standards. The existence of instruments such as the ICCPR and CERD have become benchmarks in assessing country commitment to minority protection. A study by Donnelly (1999) confirms that the successful implementation of international standards depends largely on domestic political will and administrative capacity to support the implementation of these norms.

Civil society participation has been shown to play an important role in safeguarding anti-discrimination policies. Organizations representing minorities are often the actors that push for policy and legal improvements. In a review by Byrnes and Freeman (1996), community-based advocacy has been shown to encourage more responsive legislation and sensitize country apparatus to broader social needs.

Inclusive legal education is one of the strategic elements in shaping the apparatus' understanding of minority rights. Many countries still adopt a legal curriculum that is insensitive to issues of diversity, so legal enforcement apparatus often does not have an adequate normative foundation in handling discrimination cases. Banks (2004) states that legal education must include multicultural perspectives to shape justice and contextualized legal practices.

Comparative studies show that countries that implement affirmative legal mechanisms such as representation quotas or cultural identity recognition policies tend to have better legal performance in ensuring equality. Suksi (1998) notes that the success of these policies relies heavily on evaluation systems that are able to regularly monitor their implementation and impact on the communities concerned.

There is also an ideological dimension that influences discriminatory policy-making. In certain cases, majoritarian arguments are used to justify restrictions on minorities. This raises serious questions about the neutrality of the legal system when it is used to protect the aspirations of the majority at the expense of the principle of inclusion. Benhabib (2002) highlights the importance of building a deliberative democracy that opens space for dialogue between identities as a basis for reconstructing a justice legal system.

This overall discussion shows that legal protection of minorities cannot be seen solely from the presence or absence of regulations, but must be analyzed within the framework of institutions, legal culture, and community participation. Justice can only be achieved when the legal system not only

relies on the principle of universality, but also gives recognition to the diversity and vulnerability that exists in society.

## CONCLUSION

The legal system is central to the quality of minority group protection in a country. This research shows that the effectiveness of such protection is largely determined by the harmony between the constitutional substance, its derivative legal instruments, and the implementation practices that take place in society. Studies show that despite constitutional commitments to non-discrimination, inequality persists due to weak political will, structural bias, and institutional incoherence. Legal protection becomes effective when it is supported by independent institutions, accountable oversight mechanisms, and the active participation of minority communities themselves.

These findings reinforce the view that justice cannot be achieved through formal legal approaches alone. It requires an approach that is able to identify social vulnerabilities, as well as a legal system that is not distant from the reality of citizens. A country that fails to build a protection system that is sensitive to diversity risks losing legitimacy and creating latent social tensions. This research highlights the need to reconstruct the legal framework to better respond to identity dynamics and minority protection.

Strengthening minority protections requires regular evaluation of public policies that directly affect these groups. Legal education and training for legal enforcement apparatus needs to be developed to raise awareness of the importance of multicultural perspectives. The state must ensure participatory policy processes, enabling minorities to shape, not just receive, protections. Collaboration between country institutions, civil society and minority communities is key to realizing substantive justice in a democratic legal system.

## REFERENCES

- Banks, J. A. (2004). *Diversity and Citizenship Education: Global Perspectives*. Jossey-Bass.
- Benhabib, S. (2002). *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton University Press.
- Byrnes, A., & Freeman, M. (1996). The Impact of the CEDAW Convention: Paths to Equality. *University of New South Wales Law Journal*, 19(1), 150-176.
- Clarke, B. (1995). Legal Containment and Religious Minorities. *Journal of Law and Religion*, 11(2), 293-318.
- Creswell, J. W. (2007). *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (2nd Ed.). Sage Publications.
- Donnelly, J. (1999). *International Human Rights*. Westview Press.
- Hannum, H. (1990). *Autonomy, Sovereignty, and Self-determination: The Accommodation of Conflicting Rights*. University of Pennsylvania Press.
- Hirschl, R. (2004). *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Harvard University Press.
- Kymlicka, W. (2007). *Multicultural Odysseys: Navigating the New International Politics of Diversity*. Oxford University Press.
- Lamarr, K. (2018). Jurisprudence of Minority Rights: The Changing Contours of Minority Rights. In *Proceedings of the 8th International RAIS Conference on Social Sciences*. Scientia Moralitas Research Institute.
- Mukminto, E., & Marwan, A. (2019). Pluralisme Hukum Progresif: Memberi Ruang Keadilan bagi yang Liyan. *Masalah-Masalah Hukum*, 48(1), 13-24.
- Mutatkar, R. (2011). State, Civil Society and Justice: The Case of India. In *Global Civil Society 2011: Globality and the Absence of Justice*. Palgrave Macmillan UK.
- Neuman, W. L. (2006). *Social Research Methods: Qualitative and Quantitative Approaches* (6th Ed.). Pearson Education.
- Parekh, B. (2000). *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. Harvard University Press.
- Rehman, J. (2000). Accommodating Minorities in a Pluralist Society: Implications for the Legal System. *International Journal on Minority and Group Rights*, 7(2), 103-126.
- Sportel, I. D. A. (2021). Introduction. Minority Families and the Law. Interactions of Ethnic, Religious, and Cultural Minorities with Law and State Institutions. *Onati Socio Legal Series*, 11(4), 948-958.
- Suksi, M. (1998). *Autonomy: Applications and implications*. Kluwer Law International.
- Thornberry, P. (1991). *International Law and the Rights of Minorities*. Clarendon Press.
- Witte, B. D. (2008). The Protection of Linguistic diversity through provisions of the EU Charter other than Article 22. In *Respecting linguistic diversity in the European Union*. John Benjamins Publishing Company.

\*Rizky, M. C., A. Herisasono, R. Hardyansah, P. Saktiawan, & R. Saputra. (2021). The Effectiveness of the Legal System in Guaranteeing Equal Rights of Minority Groups in Constitutional Structures, *Journal of Social Science Studies*, 1(2), 193 – 196.