



## **The Exploration of Human Rights from the Perspective of Development Law Theory: What and How?**

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**Abstract:** *This study analyzes human rights in legal development to ensure that fundamental human rights are not neglected. Human rights are inherent to every human being, derived from religious, moral, and noble cultural values. Everyone is part of society, consisting of individuals with fundamental rights. Human rights-based development planning becomes a benchmark in development planning so that it does not sacrifice human rights but is used as a tool to achieve goals in enforcing the right to development. However, this becomes a challenge that needs to be faced to prioritize human rights without neglecting the public interest. This study aims to develop development strategies based on the close relationship between strategies and development processes with efforts to promote respect for human rights. The study method uses a normative juridical approach. Data were collected through legal literature and legal materials, namely primary, secondary, and tertiary legal materials. The research results show that development law is important to address increasingly complex social changes and ongoing development agendas. The state must prioritize and ensure that business and development align with the fulfillment of the right to a good and healthy living environment rather than opening up space for environmental destruction. The manifestation of the legal development model is to pay attention to the human dimension as the main goal of development, which provides citizens with access to participate in decision-making in various fields of life. The law allocates greater authority to citizens for their self-realization as subjects, not objects shaped and controlled by other subjects.*

**Keywords:** Human Rights, Development, Law

**Abstrak:** Studi ini menganalisis konsep hak asasi manusia dalam konteks pembangunan hukum agar hak-hak dasar manusia tidak terabaikan. Hak asasi manusia adalah hak yang melekat pada setiap insan manusia yang berasal dari nilai agama, moral dan luhur budaya. Setiap individu merupakan bagian dari masyarakat, terdiri dari individu-individu yang masing-masing memiliki hak dasar. Perencanaan pembangunan yang berwawasan hak asasi manusia menjadi tolak ukur dalam perencanaan pembangunan sehingga tidak mengorbankan hak asasi manusia, melainkan digunakan sebagai alat untuk mencapai tujuan dalam penegakkan hak atas pembangunan. Namun hal tersebut menjadi tantangan yang perlu dihadapi agar mengedepankan hak asasi manusia, tidak mengabaikan kepentingan umum. Kajian ini bertujuan untuk mengembangkan strategi pembangunan yang didasarkan hubungan erat antara strategi dan proses pembangunan dengan usaha memajukan penghargaan terhadap hak asasi manusia. Metode kajian menggunakan pendekatan yuridis normatif. Data dikumpulkan melalui kepustakaan hukum dan bahan hukum, yaitu bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Hasil penelitian menunjukkan bahwa hukum pembangunan penting digunakan untuk menghadapi berbagai perubahan sosial yang semakin kompleks dan agenda pembangunan yang terus berlangsung negara memiliki kewajiban untuk mengutamakan juga memastikan bisnis dan pembangunan sejalan dengan pemenuhan hak atas lingkungan hidup yang baik dan sehat, bukan justru membuka ruang dalam terjadinya kerusakan lingkungan hidup. Manifestasi dari model pembangunan hukum yaitu memberi perhatian pada aspek dimensi manusiawi sebagai tujuan utama pembangunan yang memberi akses kepada warga negara untuk ikut serta dalam pengambilan keputusan di berbagai bidang kehidupan. Hukum memberi alokasi wewenang yang lebih besar kepada warga negara untuk realisasi dirinya sebagai subjek, bukan objek yang dibentuk dan dikontrol oleh subjek lain.

**Kata Kunci:** *Hak Asasi Manusia, Pembangunan, Hukum*

## **A. Introduction**

The rapid development in the field of science and technology, accompanied by the growth of socio-cultural, political, and economic order today, greatly affects various aspects of life in the present era, where development and changes in the era, besides bringing convenience to society, also become the cause of several new problems that give rise to various new phenomena that previously did not exist, are present and become a reality at this time.<sup>1</sup> Every human being is given human rights, which are sourced from religious values, universal moral values, and noble values of the nation's culture, based on Pancasila and the Constitution of the Republic of Indonesia (UUD NRI) 1945.<sup>2</sup>

The Indonesian nation recognizes that every individual is part of society and vice versa, society consists of individuals who each have basic rights. Normatively, the

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<sup>1</sup>Dennis Klimchuk, Irit Samet, and Henry E. Smith, *Philosophical Foundations of the Law of Equity* (New York: Oxford University Press, 2020).

<sup>2</sup>Fradhana Putra Disantara et al., "Sistem Hukum Penanggulangan Darurat Kesehatan Dalam Perspektif Omnibus Law: Relasi Terhadap Hak Asasi Manusia," *Jurnal Interpretasi Hukum* 5, no. 2 (October 8, 2024): 1120–30.

definition of human rights can be formulated in various Indonesian laws and regulations, both implicitly and explicitly. The laws and regulations that explicitly regulate human rights are the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, and Law No. 26 of 2000 concerning Human Rights Courts.<sup>3</sup>

The existence of these laws is an organic tool to enforce the law within the framework of human rights protection or vice versa, the enforcement of the supremacy of law within the framework of human rights protection. In today's era, violations of human rights continue to occur; this happens because the existing structure, both local, national, and international, has not truly made the principle of human rights a basis that is consistently adhered to. Various human rights instruments have been agreed upon as a joint guideline for enforcing human rights. The development of the discourse on the concept of human rights through these instruments sometimes raises difficult issues, such as national sovereignty, universalism, and particularism, gender, and children's rights, to the issue of which is more important between civil and political rights and economic, social, and cultural rights.<sup>4</sup> However, the search for the concept of human rights often experiences long debates due to the polarization of thought among human rights advocates, namely between those who believe in liberalism and socialism.

For liberals, the primary focus is on individual rights, such as freedom of speech, freedom of religion, and freedom from state interference. They tend to support free markets and reduced government interference as a way to ensure economic freedom and ensure that personal rights are not violated.<sup>5</sup> Socialists, on the other hand, emphasize the importance of collective and social rights, such as the right to work, education, housing, and health. Socialists believe that an active role for the state in intervention and redistribution is necessary to ensure the sustainability of these rights and to pursue social and economic justice.<sup>6</sup>

These differing views often highlight the tension between individual freedom and social justice, raising questions about how to balance the two to achieve greater justice. In modern practice, many countries have attempted to integrate these two perspectives by recognizing the importance of civil and political liberties as well as economic and social rights. This approach reflects an attempt to address the complexities of designing a human rights framework that takes both aspects into account in various cultural and economic contexts around the world. This integration effort can also be seen as a response to the need for a more comprehensive and

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<sup>3</sup>Ismail Marzuki and Faridy Faridy, "Relevansi Hukum dan Hak Asasi Manusia Dengan Agenda Reformasi: Dimensi Nasional Dan Internasional," *JCH (Jurnal Cendekia Hukum)* 5, no. 2 (March 30, 2020): 350.

<sup>4</sup>Louiza Odysseos and Bal Sokhi-Bulley, "After Rights? Politics, Ethics, Aesthetics: An Introduction," *The International Journal of Human Rights*, October 16, 2024, 1-12.

<sup>5</sup>Pierre Thielbörger, "The 'Essence' of International Human Rights," *German Law Journal* 20, no. 6 (September 4, 2019): 924-39.

<sup>6</sup>Thielbörger.

sustainable human rights framework. In fact, at this time, liberalism (Western concept) emphasizes more on individual rights, namely civil and political rights (ownership and liberty), while socialism emphasizes more on community rights or individual obligations to society, as recommended by Karl Marx by prioritizing economic progress over civil and political rights.<sup>7</sup>

These opposing views result in various human rights violations caused by repressive practices, restrictions on people's participation, and exploitation of both natural and human resources.<sup>8</sup> These differences in views lead to variations in policies and regulations across countries. Countries with a liberal orientation may focus more on protecting civil and political rights, while countries with socialist tendencies may emphasize economic and social rights as a priority in their public policies. In the context of development, this polarization affects how countries design development programs. Countries with a liberal approach may minimize the role of government in the economy, while countries influenced by socialist views are more likely to implement extensive welfare programs to reduce social and economic inequalities. This tension can also lead to certain human rights issues being neglected. For example, countries that focus on individual rights may ignore collective interests and the need for social justice, while countries with a socialist approach may sacrifice personal freedoms to achieve economic and social goals. Polarization has an impact on international councils and diplomatic forums, where countries are often divided by their support for individual or collective rights. This can make it difficult to achieve international consensus on global human rights standards.

Views on human rights can be viewed through the lens of legal theory, as law is seen as the primary mechanism for protecting and enforcing human rights.<sup>9</sup> Constitutions, regulations, and statutes often reflect and set standards of human rights that states and individuals must adhere to. However, human rights influence the formation of legal norms and principles. Many aspects of modern law, including criminal law, civil law, and international law, have been influenced by human rights principles.<sup>10</sup> This ensures that the law is not only just but also preserves the dignity and rights of individuals. Moreover, legal theory recognizes the importance of human rights in the application and interpretation of law by courts. These rights provide a frame of reference for judges to interpret the law and decide cases involving violations or protections of human rights. On the other hand, law also highlights how human rights can influence legal change. When long-standing practices fail to protect individual rights, human rights movements and public pressure can encourage legal reforms to

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<sup>7</sup>Werner Hamacher and Ronald Mendoza-de Jesús, "On the Right to Have Rights: Human Rights; Marx and Arendt," *CR: The New Centennial Review* 14, no. 2 (July 1, 2014): 169–214,

<sup>8</sup>Barrie Sander, "Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation," *Fordham International Law Journal* 43, no. 4 (2020): 939–1004.

<sup>9</sup>J. Raz, "Legal Rights," *Oxford Journal of Legal Studies* 4, no. 1 (1984): 1–21.

<sup>10</sup>Jarman Arroisi and Erva Dewi Arqomi Puspita, "Soul Restoration in Islamic Tradition (Ibn Tufail's Perspective of Tazkiyya an-Nafs Model)," *Jurnal Ushuluddin* 28, no. 2 (2020): 170,

ensure better protection. It is through legal theory that law seeks to find the right balance, using human rights as a guideline for assessing government policies and practices.<sup>11</sup> One legal theory that is relevant to human rights is the theory of development law. This is because the theory of development law emphasizes that development must be human-centered and improve the quality of life for the community. This is in line with the basic principles of human rights which aim to protect the dignity and rights of every individual.

This theory seeks to integrate human rights into every stage of development, ensuring that development policies and practices not only aim to improve economic indicators but also strengthen the social, economic, and cultural rights of the population. By prioritizing social justice, the Theory of Development Law aims to reduce social and economic disparities.<sup>12</sup> This is relevant to human rights which advocate equality of rights and non-discrimination, ensuring that all groups in society benefit from the results of development. Moreover, human rights emphasize the importance of community participation in the decision-making process. The Theory of Development Law adopts this principle by ensuring that the voices of the community, especially vulnerable groups, are heard in the planning and implementation of development projects.<sup>13</sup> This theory emphasizes the importance of strengthening the legal and institutional framework to support the sustainable development process. Thus, a strong and accountable legal system and institutions can guarantee the effective implementation of human rights. On the other hand, the Theory of Development Law includes an evaluation of the impact of development policies on human rights. This assessment is important to ensure that development projects do not violate basic rights and instead support the fulfillment of human rights. Based on the problems above, the author is interested in discussing the study of human rights from the perspective of the theory of development law.

The method used in this study is normative juridical, with legal literature and legal materials, consisting of three forms: primary legal materials, secondary legal materials, and legal aids in the form of legal dictionaries and encyclopedias.<sup>14</sup> The legal materials are analyzed based on the hermeneutic circle method, with linguistic and phenomenological (philosophical and comparative) analysis to gain a comprehensive understanding of the exploration of human rights from the perspective of development law theory. Method of collecting legal materials The researcher conducts an inventory of laws and regulations concerning or relating to the legal issues raised. Searches related to relevant legal materials are used to make it easier for researchers to provide prescriptions or legal issues to be raised. Legislation in this case includes both

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<sup>11</sup>Jack Donnelly, "Human Rights as Natural Rights," *Human Rights Quarterly* 4, no. 3 (1982): 391.

<sup>12</sup>Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan (Kumpulan Karya Tulis)* (Bandung: Alumni, 2002).

<sup>13</sup>M. Zulfa Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdikan Pada Pembangunan?," *Undang: Jurnal Hukum* 1, no. 2 (March 11, 2019): 363-92.

<sup>14</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kencana, 2017).

legislation and regulation, and even delegated legislation and delegated regulation.<sup>15</sup> Next, the author conducted an inventory by searching through law books. In law books, there are many legal concepts.<sup>16</sup>

## **B. The Development of Law Theory: Sociological and Philosophical Aspects of Human Rights**

In Indonesia's historical evolution of law, the Theory of Development Law proposed by Mochtar Kusumaatmaja has garnered significant interest from scholars and the public.<sup>17</sup> The Theory of Development Law has garnered significant attention for numerous critical reasons, which can be summarised as follows:<sup>18</sup> The Theory of Development Law is a legal theory that has emerged in Indonesia, formulated by Indonesians considering the dimensions and culture of Indonesian society. Consequently, based on the parameters of developmental law theory, it originated, evolved, and advanced by Indonesia's circumstances, ensuring its application aligns with the conditions and realities of the diverse Indonesian society. Secondly, regarding dimensions, the Theory of Development Law employs a framework grounded in the lifestyle of the Indonesian populace and nation, adhering to the familial principles of Pancasila. Consequently, the norms, principles, institutions, and regulations encompassed within the Theory of Development Law are relatively dimensional, incorporating structure, culture, and substance, as articulated by Lawrence W. Friedman.<sup>19</sup> Third, the Theory of Development Law fundamentally establishes law as a "means of social renewal" (law as an instrument of social engineering), which is essential for the Indonesian nation as a developing country.

Historically, in the 1970s, the Theory of Development Law emerged, wherein the originator intended to convey a "concept" of legal development rather than a "theory," which was derived and adapted from Roscoe Pound's notion of "Law as a tool of social engineering" that originated in the United States.<sup>20</sup> The Theory of Development Law, as articulated by Mochtar Kusumaatmadja, is theoretically influenced by the perspectives of Herold D. Laswell and Myres S. McDougal (Policy Approach), together with the legal theory of Roscoe Pound, excluding his mechanistic conception. Mochtar analysed all of these inputs and adapted them to Indonesian circumstances. In this process, Mochtar Kusumaatmadja incorporated a pragmatic objective (for developmental purposes) derived from Roscoe Pound and Eugen Ehrlich, illustrating a correlation with Laswell and McDougal's assertions that collaboration between legal scholars and practitioners

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<sup>15</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, I (Jakarta: Kencana, 2010).

<sup>16</sup>Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed. (Jakarta: Kencana, 2017).

<sup>17</sup>Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdikan Pada Pembangunan?"

<sup>18</sup>Mardani, *Teori Hukum: Dari Teori Hukum Klasik Hingga Teori Hukum Kontemporer* (Jakarta: Prenada Media, 2024).

<sup>19</sup>Lawrence M. Friedman, "Legal Culture and Social Development," *Law and Society Review* 4, no. 1 (1969): 29-44.

<sup>20</sup>Michael Martin, "Roscoe Pound's Philosophy of Law," *Philosophy* 51 (1965): 37-55.

of law can ideally yield a theory of law (theory concerning law), one that possesses a pragmatic dimension or practical application. Mochtar Kusumaatmadja transformed the notion of law from a mere tool to an instrument for societal development. The fundamental principles of this notion assert that order and consistency in development and renewal initiatives are not only desirable but essential, and that legal rules are anticipated to guide human actions towards the objectives of development and renewal.<sup>21</sup> Consequently, there is a necessity for unwritten legal norms that must align with the prevailing societal laws. Moreover, Mochtar contends that law as a means encompasses a broader scope than law as a tool because.

In Indonesia, legislation plays a more significant role in the legal reform than in the United States, where jurisprudence, particularly Supreme Court rulings, holds greater importance. The notion of law as a "tool" will provide outcomes like the application of "legalism" prevalent during the Dutch East Indies period. In Indonesia, a societal disposition demonstrates sensitivity towards rejecting the implementation of such a concept. If "law" includes international law, the notion of law as a vehicle for social transformation was utilised long before it was formally recognised as the foundation for state legal policy.

The aforementioned benchmark explanation indicates two aspects fundamental to the Theory of Development. The legal framework established by Mochtar Kusumaatmadja posits that order or regularity, particularly in the context of renewal or development, is desirable and regarded as paramount. Law, understood as a system of legal rules or regulations, can effectively serve as a regulatory instrument or mechanism for development by guiding human activities towards desired renewal. A more intense and detailed description of the aforementioned perspective aligns with the assertion of Sjachran Basah, who posits that the anticipated role of law, beyond its traditional function, can also serve as a guiding force in developing a society to achieve the objectives of national life.<sup>22</sup>

Mochtar Kusumaatmadja comprehensively defines law, encompassing the principles and rules governing human life within society and the institutions and processes that facilitate the practical application of these rules. A normative approach focused exclusively on legislation is insufficient for achieving legal growth. Mochtar subsequently contemplates the essence of law and its operational mechanisms. According to the Figure,<sup>23</sup> Law constitutes a component of social norms; however, it is not the sole element. Alongside legal frameworks, human existence within society is governed by moral norms, religious beliefs, ethical standards, civility, and cultural practices. He stated that there was a strong interconnection between law and other social standards, with each reinforcing the other. There exists a substantial distinction

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<sup>21</sup>Mardani, *Teori Hukum: Dari Teori Hukum Klasik Hingga Teori Hukum Kontemporer*.

<sup>22</sup>I Gede Agus Kurniawan, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara, "IUS Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 31–45.

<sup>23</sup>Kriswanto Kriswanto, "Harmonisasi Hukum Di Indonesia Dalam Perspektif Teori Hukum Pembangunan," *Istinbath : Jurnal Hukum* 19, no. 01 (August 26, 2022): 37.

between law and other social standards, specifically that legal obligations may be enforced systematically.

The coercion aimed at ensuring the establishment of legal provisions is governed by certain regulations concerning its form, manner, and methods of execution. Law necessitates coercion for the implementation of its stipulations, hence requiring authority for its enforcement. Power is referred to as Mochtar, an absolute component inside a legal society, as such a society is governed by and founded upon law. Mochtar identifies law as a fundamental social rule aimed at preserving and achieving public order. The primary objective of all laws is to establish order. The necessity of this order is a key prerequisite for the existence of an ordered society. Besides maintaining order, another objective of law is to attain justice, which varies in substance and scope depending on society and its historical context. Consequently, the order established by law must likewise align closely with justice. The function of law is to serve as a mechanism for preserving order throughout society.

This type of function is referred to as a Mochtar function, signifying its role in preserving and safeguarding established achievements. A role of this nature is essential in any community, especially emerging ones, as there are outcomes that require maintenance, protection, and security. In a growing society marked by change, the law lacks a sufficient conservative function.<sup>24</sup> It must also facilitate the process of social transformation, ensuring that change occurs systematically and consistently. Mochtar Kusuma-Atmadja's notion of development law elucidates the role and purpose of law within a developing society, specifically referred to as national development in Indonesia. In an evolving community, the law must not only preserve order but also facilitate social change and progress in a systematic and disciplined manner.

Mochtar Kusuma-Atmadja's view is relevant to several other opinions. In the context of political and legal theory, Robert Goodin argues that development law must link legal provisions with desired development outcomes.<sup>25</sup> He invites consideration of the design of legal policies that can support the achievement of more just and sustainable development goals, where human rights are guaranteed in the decision-making process. Friedman highlights the importance of a multidisciplinary approach in development law,<sup>26</sup> Friedman states that law must adapt to social and economic dynamics to effectively protect human rights. He believes that development law must respect and protect human rights to achieve sustainable and inclusive development goals. Not only that, Francois Ewald is of the view that development law must function as a tool to achieve the collective goals of society. He emphasizes that within the legal

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<sup>24</sup>Anak Agung Istri Ari Atu Dewi et al., "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," *Sriwijaya Law Review* 6, no. 2 (2022): 268–85.

<sup>25</sup>R. E. Goodin, "An Epistemic Case for Legal Moralism," *Oxford Journal of Legal Studies* 30, no. 4 (December 1, 2010): 615–33.

<sup>26</sup>Lawrence M. Friedman, "Legal Culture and Social Development," *Law & Society Review* 4, no. 1 (August 1, 1969): 29–44.

framework, development must prioritize aspects of welfare and human rights and create a fair and transparent framework.<sup>27</sup>

In the aspect of human rights, the theory of development law can be studied from sociological and philosophical aspects. The sociological aspects of Human Rights (HR) within the framework of Development Law Theory reflect the close relationship between law, society, and the development process. Development Law Theory focuses on how law can be used as a tool to achieve broader social and economic goals, prioritizing the respect for HR. In this context, a sociological understanding of human rights becomes critical, as these rights are not merely related to the formal norms enshrined in legislation but also encompass the social, political, and cultural dynamics occurring within societies. Firstly, the sociological aspect of HR in Development Law Theory emphasizes the importance of the social context in which the law is applied. Each society has its own background, traditions, and values that influence how HR is understood and implemented. For example, in a society that values collectivism, individual rights may not always take precedence over the welfare and collective rights of the community.

Therefore, when formulating development policies, it is essential to pay attention to the local context and understand how social dynamics can influence the acceptance and implementation of HR. Law, as an instrument of development, must be able to adapt to the cultural diversity within society in order to effectively protect and promote human rights. Secondly, community participation is a key element in the sociological aspect of HR. Development Law Theory emphasizes the importance of involving communities in decision-making processes related to development. This participation is crucial, not only to ensure that policies reflect the needs and aspirations of the people but also to strengthen the position of communities in advocating for their rights. In this context, the right to participate is fundamental to HR. When communities are engaged in the development process, they are not merely objects of policy but active subjects with a voice and role in determining the direction of development that aligns with their rights. Community involvement fosters awareness of human rights and enhances the capacity of communities to demand justice and accountability from the government.

Furthermore, understanding HR must be based on a deeper analysis of the social structure and power dynamics within society. Development Law Theory acknowledges that HR violations often occur as a result of structural injustices and imbalanced power dynamics. Therefore, it is important to conduct a critical analysis of how law and development policies can affect existing power relations within society. In many cases, certain groups, particularly marginalized ones, may not have equal access to the benefits of development, either due to discrimination or lack of representation in decision-making processes. By understanding these aspects, law can be directed to

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<sup>27</sup>François Ewald, "Norms, Discipline, and the Law," *Representations* 30 (April 1, 1990): 138-61.

address existing injustices and provide better protection for all layers of society, especially the vulnerable.

The sociological aspect also calls us to consider the relationship between law and prevailing social values. Law cannot be separated from existing social norms, and changes in society often reflect shifts in perspectives on human rights. This means that to promote and protect HR through law, an inclusive and sensitive approach to social dynamics is required. For example, education about human rights and awareness of their importance in the context of development need to be encouraged so that society understands and is capable of demanding its rights. In this way, law is not simply seen as a rigid set of rules but as a dynamic instrument that can adapt to social and cultural changes.

From the perspective of Development Law Theory, the sociological aspect is also crucial in promoting positive social change. Development law must not only seek to address the consequences of HR violations but also resolve the root causes that lead to such violations. For instance, if poverty and economic inequality are considered the leading causes of rights violations, development law must formulate policies focusing on resource redistribution, job creation, and equal access to basic services such as education and health. Applying the law can create better social conditions and support the fulfillment of human rights. The sociological aspect of human rights in the context of development law theory also includes the necessity for strong advocacy and social movements. When communities mobilize to advocate for their rights, they are not only demanding legal changes but also shifting societal views on the importance of HR. Social movement involvement legitimizes human rights demands and creates space for dialogue between society and the government. This dialogue is essential for understanding and collaboration in creating fair and sustainable development policies. Moreover, social movements can also act as watchdogs, ensuring that enacted laws and policies align with human rights principles.

The sociological aspects of human rights within the perspective of Development Law Theory highlight that to achieve sustainable and inclusive development, it is essential to understand the social context and the interrelationship between law and society. Community participation, analysis of power structures, and the relationship between law and social values are key elements that need to be considered. Thus, law is not merely a regulatory tool but also an instrument that can promote social change and justice for all individuals, particularly those who are marginalized. In this era of development filled with challenges, the synergy between HR and Development Law is critical to ensure that every individual can enjoy their fundamental rights and contribute to creating a fairer and more prosperous society. What about the philosophical aspect? The philosophical aspects of human rights within the framework of Development Law Theory underscore the ethical foundations and fundamental thinking that shape approaches to development and the protection of individual rights. Development Law Theory emphasizes that development is not merely an economic achievement but also a process that must prioritize respect for human dignity and the

basic rights of every individual. In this context, the philosophical aspects of human rights serve as a moral compass, ensuring that development policies do not merely prioritize efficiency and productivity but also justice, equality, and the recognition of human values.

First, the philosophy behind human rights emphasizes that all individuals possess inherent rights from birth because they are human beings. This perspective is rooted in universal thinking that recognizes human dignity as the highest value. Thinkers such as Immanuel Kant have emphasized that everyone has the right to be respected and treated with dignity.<sup>28</sup> Kantianism, with its principles of autonomy and respect for individuals, contributes to developing the understanding of human rights as part of universal morality.<sup>29</sup> Therefore, within the framework of Development Law Theory, these principles must be integrated to ensure that every policy and action in development respects human rights as an integral part of the sustainable development process. Second, the social philosophical perspective links human rights with social justice.

Development Law Theory aims to create a social structure that is fair and equitable, where every individual has the opportunity to participate in the development process. Thinkers like John Rawls argue that justice should be the foundation of all social and economic structures.<sup>30</sup> In the context of development, this means that the distribution of resources and opportunities must be designed in such a way as to pay attention to the most vulnerable in society. Rawls's concept of "justice as fairness" explains that everyone should have equal access to fundamental rights and opportunities for well-being.<sup>31</sup>

Thus, the philosophical aspects of human rights speak about individual rights and address collective and communal aspects that ensure the humanity of all is valued. Furthermore, philosophical thinking about human rights highlights the importance of solidarity and social responsibility. In Development Law Theory, solidarity is vital to creating an inclusive and just society. The social ethical thoughts of philosophers such as Martin Buber and Hans-Georg Gadamer describe the importance of interpersonal interactions in building a sense of community and mutual understanding. In this context, human rights are not just an individual responsibility, but a collective responsibility as well. Community solidarity in the context of development strengthens social ties that enable individuals to collaborate towards achieving common goals. In this regard, the law reinforces social solidarity and ensures that individual and collective rights are respected and protected.

The philosophical aspects of human rights also emphasize the significance of economic, social, and cultural rights as integral parts of human rights. Development

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<sup>28</sup>Christopher J. Insole, *Kant and the Divine: From Contemplation to the Moral Law* (New York: Oxford University Press, 2020).

<sup>29</sup>Insole.

<sup>30</sup>Kemi Anthony Emina, "John Rawls Concept of Person and Society: A Critique," *Pinisi* 1, no. 3 (2021): 77.

<sup>31</sup>Emina.

Law Theory must incorporate the understanding that economic progress alone is insufficient to guarantee individual well-being. This is evident in the thinking of economists and philosophers such as Amartya Sen, who in his work "Development as Freedom" emphasizes that development should enhance individual freedoms and eliminate barriers that obstruct access to fundamental rights. In this context, rights to education, health, and a decent livelihood are essential to sustainable development. Sen argues that economic and social rights cannot be separated from civil and political rights because these rights are interconnected and mutually supportive.

From the perspective of development law theory, there is also a need to consider historical and cultural contexts when enforcing human rights. Postcolonial philosophy, as articulated by Edward Said and Gayatri Chakravorty Spivak,<sup>32</sup> Shows that many human rights norms and practices stem from Western cultural contexts and may not necessarily encompass values and experiences from other cultures. This indicates that the enforcement of HR must be sensitive to cultural differences and local traditions. Thus, the formulation of policies and implementation of development laws must reflect the needs and values of local communities while adhering to universal human rights principles. In this regard, law is not seen merely as a rigid set of rules but as a dynamic process that requires dialogue and negotiation between universal human rights values and local values.

Moreover, the philosophical aspects of human rights within the context of Development Law Theory also include the importance of transparency, accountability, and participation in governance. The concept of deliberative democracy invites society to engage in decision-making processes and ensures that their voices are heard. This is also related to the idea of the right to participate, wherein society has the right to be involved in the development processes that affect their lives. When individuals and communities have opportunities to speak and participate in policy formulation, justice and equality can be better guaranteed. This leads to the ultimate goal of development law: to create an inclusive and empowered society where everyone can enjoy their human rights without discrimination.

The philosophical aspects of Human Rights within the perspective of Development Law Theory emphasize that HR is not merely a set of rights protected by law, but also reflects the ethical and moral values underpinning sustainable and fair development. Through the integration of ethical principles, social justice, solidarity, and respect for cultural diversity, development law can become an instrument that facilitates economic growth and ensures that every individual receives the respect they deserve regarding their rights. In a constantly changing world, these philosophical reflections become increasingly relevant as guides to creating a better future where everyone can live with dignity, freedom, and equal opportunities.

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<sup>32</sup>Alison Brysk and Arturo Jimenez, "The Globalization of Law: Implications for the Fulfillment of Human Rights," *Journal of Human Rights* 11, no. 1 (January 2012): 4-16.

### **C. The Relevance of Human Rights to Development Law Theory: What and How?**

The relevance of Human Rights (HAM) to the Theory of Development Law is very significant, considering that both are interrelated in efforts to achieve community welfare and protection and respect for individual dignity. Theory of Development Law focuses on the role of human rights in providing an ethical basis for development policies. The principles of human rights require that development not only focus on economic growth, but also pay attention to social and environmental aspects. This is in line with the goals of sustainable development (SDGs), which emphasize human welfare and environmental protection.<sup>33</sup> In this context, the theory of development law helps regulate the legal framework that ensures that development policies meet human rights standards and is a tool to achieve social and economic development goals. In contrast, human rights emphasize the importance of protecting individual and collective rights.<sup>34</sup>

The Theory of Development Law seeks to create social justice and equity in the distribution of resources. The relevance of human rights is seen in efforts to protect the rights of vulnerable groups, such as the poor, women, and minorities. Good development policies must accommodate and protect these rights, so that all members of society have equal opportunities to participate in the development process. In the Theory of Development Law, community participation is a key element.

Human rights support the right to participate in decision-making that affects people's lives. When people are involved in the policy formulation process, they are not only objects of development, but also subjects with a voice. This creates accountability and transparency in policy implementation. The Theory of Development Law recognizes that civil and political rights cannot be separated from economic, social, and cultural rights. The success of development is not only measured by economic growth, but also by the recognition and protection of basic community rights. This holistic approach ensures that development does not ignore fundamental humanitarian aspects. In the development process, the potential for human rights violations can occur, both from individuals and the state. The Theory of Development Law provides a legal framework to identify and address these violations.

With clear regulations regarding human rights violations, the community can demand justice and reparation, and push the government to be accountable for actions that harm individual rights. The Theory of Development Law helps in formulating policies that ensure the fulfillment of the economic, social, and cultural rights of the community. This includes access to education, health, decent work, and adequate public services. Protection of these rights supports the ability of individuals to

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<sup>33</sup>Lasse Schuldt, "Layered Localization of International Human Rights Law: Signaling and Contestation in the Context of Thailand," *Journal of Human Rights* 23, no. 4 (August 7, 2024): 404–19, <https://doi.org/10.1080/14754835.2024.2380705>.

<sup>34</sup>Jackie Smith and Michael Goodhart, "Human Rights Globalization: How Local and Global Actions Institutionalize Human Rights," *Journal of Human Rights* 23, no. 2 (March 14, 2024): 125–33, <https://doi.org/10.1080/14754835.2024.2324202>.

participate in development and improve their quality of life.<sup>35</sup> The Theory of Development Law has an important role in maintaining a balance between the need to carry out development and the obligation to respect and protect human rights. Without proper regulation, development can risk causing rights violations, such as mass evictions, environmental pollution, and marginalization of certain groups.

Therefore, he emphasized that laws based on human rights principles are very necessary to direct sustainable development. The relevance of human rights in the Theory of Development Law is also seen in the importance of education and awareness of human rights among the community. The community can understand their rights through educational programs and actively participate in the development process. This awareness is key to building a society that is aware of human rights and can demand the fulfillment of these rights in the context of development.

The Theory of Development Law encourages the strengthening of legal and judicial institutions tasked with protecting human rights. With a strong and independent legal system, people can have the assurance that their rights will be protected and upheld. This creates a solid foundation for creating a just and substantial development atmosphere. In a global context, human rights and the Theory of Development Law are interrelated and can be influenced by international agreements, conventions, and the commitment of the international community to respect and protect human rights. Countries around the world are committed to achieving common goals that are not only focused on economic growth, but also pay attention to the welfare of humanity as a whole.

Then, from the perspective of development law theory, the elements of human rights play a crucial role in shaping and guiding sustainable development processes. The right to life is the most fundamental human right. In the context of development, this means that every individual should have access to conditions that support a decent life, including access to food, clean water, adequate housing, and healthcare services.<sup>36</sup> Development Law Theory emphasizes the importance of policies that guarantee the fulfillment of these rights as a top priority. Education is key to empowering communities and promoting participation in the development process. The right to education includes inclusive and quality access for all individuals, without discrimination.

Within this framework, education is not only viewed as a right but also as a tool to promote social justice and equality in development. The right to work and to obtain a decent livelihood is an important element of sustainable development. Development Law Theory encompasses the principle that every individual has the right to have fair and decent work, as well as to receive adequate compensation. Protection of workers'

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<sup>35</sup>Rachel Chambers and David Birchall, "How European Human Rights Law Will Reshape U.S. Business," *Hastings Bus. L.J.* 20, no. 3 (2024): 1-56.

<sup>36</sup>I Gede Agus Kurniawan and Lourenco De Deus Mau Lulo, "Legal Protection Orientation And Formulation For Traditional Musical Instruments As Patents: An Inclusive Legal Paradigm," *Jurnal Dinamika Hukum* 23, no. 2 (August 26, 2023): 325, <https://doi.org/10.20884/1.jdh.2023.23.2.3629>.

rights is also crucial to ensuring the economic and social well-being of the community. Community participation in decisions that affect their lives is a fundamental right in development. This includes the right to be involved in political, economic, and social processes. Development Law Theory supports strengthening participatory mechanisms that allow communities to voice their opinions and contribute to policy formulation.

Access to justice is a vital element that ensures individuals can demand the fulfillment of their rights. In the context of development, this theory emphasizes the importance of a fair and transparent legal system, where communities can seek legal protection and obtain reparations for human rights violations. Freedom of expression is a foundation of democracy that allows individuals to voice their opinions and criticisms regarding development policies. From the perspective of Development Law Theory, this right supports transparency and government accountability, as well as fosters constructive dialogue between the public and policymakers. In the context of sustainable development, the right to a healthy environment is increasingly recognized as an important element of HR. Development Law Theory acknowledges that access to a clean and safe environment is a vital component of human well-being while also contributing to ecosystem sustainability. The right to maintain and develop cultural identity is an important element of inclusive development. Development Law Theory encourages respect for cultural diversity and ensures that specific groups, such as indigenous communities, can access their rights and participate in the development process according to their values and traditions.

#### **D. Conclusion**

The sociological aspect of Human Rights from the perspective of Development Law Theory shows that to achieve sustainable and inclusive development, it is essential to understand the social context and the relationship between law and society. Community participation, analysis of power structures, and the relationship between law and social values are essential elements that must be considered. Then, the philosophical aspect of human rights from the perspective of development law theory emphasizes that human rights are not only a set of rights protected by law, but also reflect ethical and moral values that underlie sustainable and equitable development. By integrating ethical principles, social justice, solidarity, and respect for cultural diversity, development law can become an instrument that facilitates economic growth and ensures that everyone gets proper respect for their rights.

The relevance of Human Rights to Development Law Theory is profound. Human Rights provide a moral and ethical framework for sustainable development policies, emphasizing the importance of social justice, community participation, and the protection of individual rights. In this context, law plays a strategic role that can ensure that development is carried out in an inclusive, equitable, and respectful manner. Therefore, integrating human rights in every development aspect is crucial to creating a prosperous, just, and sustainable society. The Human Rights elements from the

Development Law Theory perspective are interrelated and provide a comprehensive framework for building just, inclusive, and sustainable development. By integrating human rights into every aspect of development in policy and practice, Development Law Theory can help ensure that all individuals have the right to participate, enjoy justice, and live in an environment that supports their well-being.

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