

ABSTRACT

This dissertation examines the protection of human rights by the MKRI (2003-2008) in reviewing the constitutionality of legislation. The Amendments of the UUD NRI 1945 transformed human rights as natural rights into constitutional provisions and later established the MKRI with a jurisdiction to review the constitutionality of legislation. In exercising its jurisdiction to review the constitutionality of legislation the MKRI performs its function as a human rights court if the constitutional basis for review is Ch. XA of the UUD NRI 1945. Therefore human rights protection is the rationale for the MKRI.

The thesis to be defended here is that in reviewing the constitutionality of legislation the MKRI should enhance the protection of human rights by upholding the concept of natural rights, i.e. rights first – government second. This view should be implemented within the judicial reasoning of the MKRI's decisions through the natural law theory of constitutional interpretation. This research reveals two important findings. First, in the most substantial case, i.e. concerning the right to life, the holding of the MKRI is dominated by positivist view, i.e. government first – rights second. Second, in applying rights-limitation clause, the MKRI is excessive. Therefore, these holdings bring negative impact to the notion of human rights protection. It could be concluded that the practice of the MKRI did not reflect its function as a human rights court.

Key words: human rights; judicial review of legislation; MKRI