

## Discrimination And Human Rights For Workers In The Indonesian Constitution

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### Abstract

Indonesia as a third world country which proclaimed its independence in 1945 until today has undergone four (4) replacements or changes in its constitution. Constitutions once being used in Indonesia are Constitution of 1945, Constitution of Federal Republic of Indonesia 1949, Provisional Constitution of 1950, and Constitution of Republic of Indonesia of 1945 after amendments. The substance of human rights and equality in the field of employment become one part of the constitutions. Discrimination or equality is not explicitly stated in the Constitution of 1945, Constitution of Federal Republic of Indonesia Year 1949, and Provisional Constitution of 1950. However, the meaning of discrimination and equality is implicitly contained in those three constitutions. The word discrimination is expressed explicitly in the Constitution of Republic of Indonesia of 1945 after amendments. Human rights and anti-discrimination with broader scopes and more details are listed in the constitution.

**Key words:** discrimination, human rights, workers, Indonesian constitution

### 1. Introduction

Law has three levels, namely value, principle and norm. Those three aspects are in a hierarchy arrangement. Value is the highest level. The next is principle. And the last is norm (dogmatic law). Legal norm is the most real, seen in everyday life manifested in the form of regulations made by the authorities. Rule is a specific condition that contains the commands, prohibitions, license, or empowerment<sup>5</sup>. Legal norms should be based on up principles, and the principles should be based on the values prevailing in society. Principles are norms commanding that something must be realized to the highest degree that is actually and legally possible<sup>6</sup>.

Pancasila is the state ideology and the source of all sources of state law and as the outlook of the nation. Pancasila contains five precepts which include the values of: the divinity of the Lord, a just and civilized humanity, the unity of Indonesia, democracy led by the wisdom in consultative/representative and social justice for all Indonesian people. Those values are the highest level in law. Kluchkhohn defines value as of conception (implicitly or explicitly, that is distinguishing characteristics of individuals or groups) of what is desirable, influencing the choice of the way, the goal and the end of an action<sup>7</sup>. According to Brameld the definition implies on the meaning of culture, including<sup>8</sup>: "(1) the value is a construct that involves cognitive processes (logic and rational) and *katektik* process (attraction or rejection by heart), (2) the value is always functional potential, but always meaningless if it is verbalised, (3) if it is associated with the culture, values have been expressed in a unique way by individuals and groups, (4) that a certain will is valuable or not, it is necessary to believe that the value is basically equated than desirable, it is defined by purpose of personality system and socio-cultural to achieve regularity or to respect other people in social life, (5) the choice among the alternatives values is made in the context of the availability of intermediate objectives and the final objectives, and (6) the value is there, it is a fact of nature, people, culture and at the same time it is the norms that have been realized."

K. Bertens<sup>9</sup> suggests three characteristics of values, namely: (1) values are related to a subject as the assessor, (2) values are within the practical level, related to the subject's will to create something, (3) values are related to characteristics of the subject and object; the same objects with different subjects will lead to different assessments. This indicates that there will be no values in the absence of the subject. Values come up from a behavior, if there is no behavior then there is no case that can be assessed. Assessment of the same object will

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<sup>5</sup> Hans M Haugen. 2011. Human Rights Principles-Can They be Applied to Improve the Realization of Social Human Rights. Max Plack Yearbook of United Nations Law Vol.15. Koninklijke Brill N.V. Nedtherlands.

<sup>6</sup> *Ibid.*

<sup>7</sup> T Brameld. 1975. *Education is Power*. New York, Rinerat and Winston Inc.

<sup>8</sup> *Ibid.*

<sup>9</sup> K. Bertens. 2011. *Etika*. Gramedia Pustaka Utama. Jakarta. Hlm.151.

produce different ratings, depending on the subject of providing an assessment. Subjects as the assessors in giving the assessments can be influenced several things including habits or customs where the assessors are. A group of people who live in cold regions will give a good judgment on the booze. By contrast, in a group of society, such as Muslims, the assessors will give the assessment that the liquor is not good, forbidden and a sin. In this case, religious teachings greatly affect the assessment of the subjects on the behavior.

It is very difficult to separate a discussion of values from norms. The relationship between values and norms by experts concluded by Rohmat Mulyana<sup>1</sup> are: (1) values have wider universal coverage than norms, (2) values represent a price believed by a person (including normative beliefs), while norms are more of a must come from the social consequences as a result of the collective agreement, (3) values are the purpose of enforcement of the norm, while the norm is a way in which to realize the standards, rules or specific rules.

According to Paul Scholten principles of law are basic thoughts, which are contained in and behind a legal system, which are formulated in law and the decisions of the judges, which are related to provisions and decisions of an individual that can be seen as an elaboration<sup>2</sup>. Ron Jue defines principles of law as values underlying the rule of law, to explain and legitimize the rule of law, rests on top of the ideological charge of legal order<sup>3</sup>.

The discovery of the principles of law can be done by looking for common characteristics in concrete law or regulation, pointing to similarities contained in those concrete law or regulation<sup>4</sup>. The principles of law can be found in legislations in force explicitly or implicitly. Explicitly principles of law are contained in Articles clearly. This can be seen in the legislation issued in 1998 to the current era. While implicitly the principles are reflected in the clauses contained in the regulations.

The principles of law are at the heart of a rule of law because the principles are the most extensive basis in the formulation of law. They are the reasons for the delivery of the rule of law, or the reasons of a system of law<sup>5</sup>. Principle of law (*rechtbeginsel*) is a common thought that the basic nature or the background of a concrete regulation (positive law) and can be found by searching for traits common ground in concrete regulations<sup>6</sup>. The principles of the law contain values and ethical demands. The rule of law may not show ethical considerations, but by the principles of law will further demonstrate the ethical demands or can be felt at the instructions in that direction<sup>7</sup>.

Indonesia's independence on August 18, 1945 up to the present has experienced turnover and changes in the Constitution. Constitutions that never applies are the Constitution of 1945 that went into force on August 18, 1945 until December 27, 1949; the Constitution of the Republic of Indonesia States that went into effect on December 27, 1949 until August 18, 1950; the Provisional Constitution which was into force on 18 August, 1950 until July 5, 1959; and the Constitution of the Republic of Indonesia of 1945 amendments entered into force in 2001. This article tries to analyze the existence of anti-discrimination, especially in employment in the never applied constitutions, starting in 1945 until now.

## 2. Method

The method used in the study of the principles of discrimination in the constitution that never applies in Indonesia is the study of law (legal research). The approaches are philosophical approach, historical approach, and legislation approach. Legal materials used in this study are the Constitution of the Republic of Indonesia of 1945, the Constitution of the Republic of Indonesian States of 1949, the Provisional Constitution in 1950, and the Constitution of the Republic of Indonesia after amendment, the minutes of the meetings of Committee for Preparatory Work for Indonesian Independence, and the minutes of the meetings of the amendment of the Constitution of the Republic of Indonesia.

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<sup>1</sup> *Op. Cit.* Hlm.16-17

<sup>2</sup> J.J.H. Bruggink. *Refleksi Tentang Hukum*. Dialihbahasakan oleh Arief Sidharta. 1996. PT. Citra Aditya Bakti. Bandung. Hlm.119

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* hlm.35

<sup>5</sup> Satjipto Rahardjo. 1996. *Ilmu Hukum*. PT. Citra Aditya Bakti. Bandung. Pg.45

<sup>6</sup> Sulastriyono. 2012. *Penerapan Norma dan Asas-asas Hukum Adat dalam Praktik Peradilan Perdata*. Jurnal Mimbar. Vol.24 No.1. Pg.27.

<sup>7</sup> *Ibid.*

### 3. Results and Discussion

#### Discrimination in the Constitution of the Republic of Indonesia of 1945

Constitution the basic law used in a country to implement its constitutional system. Everything in the country must be appropriate and in line with the constitution as the basic law. A good constitution can be used as a solid foundation for young democracies, while the text of the constitution disability often create political instability and in some cases a reversal of democracy (democracy reversals)<sup>1</sup>. The formulation of the Constitution made by the founder of the state was in a very critical, precarious and urgent condition that resulted very simple and general formula. Thus, in its application requires interpretations of the state administrators.

In general, the structures of the Constitution formulated by Committee for Preparatory Work for Indonesian Independence consist of the Preamble, the Body, and explanation. Preamble contains the declaration of independence of Indonesia, the goals of the country, and the formulation of Pancasila as the state ideology. The body contains the form of the state, state institutions, human rights, and other. Meanwhile, after four times amendments Explanation is removed from the Constitution. At the end, Constitution of 1945 only consists of two parts, namely the opening and chapters.

The word discrimination was not explicitly expressed in the formulation of Constitution of 1945 passed by Indonesian independence preparatory committee on August 18, 1945. Likewise, there was no word discrimination in the Constitution of 1949 and Provisional Constitution of 1950. The formulation containing the word discrimination is only in Constitution of 1945 with amended. Nevertheless, it does not mean that those three constitutions that never apply in Indonesia do not regulate or prohibit discrimination. Discrimination is a difference in treatment that does not benefit another person or group of people in a bad way<sup>2</sup>. The word discrimination implicitly or explicitly can be viewed from a variety of Articles governing equality of each person or citizen in many areas of life. The word equality is inseparable from human rights. Discussion on discrimination cannot be separated from human rights that recognize the similarity or equality in all aspects of life. Thus anti-discrimination implicitly is visible at the use of other words, e.g. giving the same treatment, equality, not distinguishing, and other words. Therefore, the discussion of human rights cannot be separated from discrimination because of the spirits of the human rights are equality and equity. Universal values which ended up being the principle or principles in human rights in international traffic shall include: the principle of equality, the principle of discrimination, and the principle of positive obligations to protect the rights of certain<sup>3</sup>. Hak asasi manusia dibagi menjadi dua jenis, yaitu hak asasi individual dan hak asasi sosial<sup>4</sup>

Therefore, in the effort of finding the meaning of discrimination in the Constitution of 1945 it will be explored through the articles, either expressed or implied. Anti-discrimination contained in the Constitution of Indonesia will be more easily searched by using the key words human rights. The following discussion will trace the history of the formulation of human rights started from Committee for Preparatory Work for Indonesian Independence through the formulation of human rights in Constitution of 1945.

Human rights provisions had gotten a special attention at that time, although the process through a fairly heated debate. There were two groups who agreed to include the formulation of human rights in the Constitution and those who disagreed. The agree group was Moh. Hatta et al. Their reason was that if there was no recognition of human rights, the state would be preying on people. The disagree group was Supomo et al. The reason was that since long time ago Indonesia was a country which had a high sense of kinship and collectivism.

The debates about the formulation of human rights that were expected to bring about justice in the society in achieving prosperity had already emerged since the meeting of Committee for Preparatory Work for Indonesian Independence. To achieve prosperity was gained through giving of individual or collective freedom. Two figures who have agreed to achieve prosperity through togetherness were Ir. Soekarno and Mr. Supomo. Ir. Sukarno in the second meeting of Committee for Preparatory Work for Indonesian Independence conveyed his views on the concept of the state that should be built amicably. The opinion was: "Throw altogether ideology of individualism, don't state it in the Constitution of so-called" rights of the citizens" as advocated by the French Republic... Dear Sirs! We want social justice. Why does the constitution wrote that human beings not only have right of freedom of voice, right of giving a vote, right to hold court and convene, if there is no social justice?

<sup>1</sup> Marcus Mietzner. 2014. *How Indonesia Won Constitution*. *Journal of Democracy*, Volume 25, Number 2, pp. 171-175 (online) <http://booksc.org/book/23350285>, Assessed on February 12, 2017.

<sup>2</sup> Thomsen Frej Klem. *Discrimination*. The Oxford Research Encyclopedia, Politics (politics.oxfordre.com). Accessed on February 12, 2017.

<sup>3</sup> Rhona K.M Smith. 2008. *Hukum Hak Asasi Manusia*. Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia. Yogyakarta. Pg.39-41

<sup>4</sup> Abdul Ghofur Anshori. 2009. *Filsafat Hukum*. Yogyakarta:Gadjah Mada University Press. Pg.112

Why should we make such a constitution if it cannot feed the stomach of people who will die of starvation? The constitution containing Rights of man and citizen cannot eliminate the hunger of the poor who are going to die. So therefore, if we really want to base our country to understanding of kinship, mutual help, mutual cooperation and social justice, away with every thought, every idea of individualism and liberalism to the constitution<sup>1</sup>.”

Based on those statements the most important points for Ir. Soekarno were that all Indonesian people were not starving; the fulfilment was done with the understanding of kinship, mutual help and mutual cooperation. The struggles as in the West about the various freedoms were less important than the fulfilment of the economic needs of the people as a whole. This opinion was supported by Mr. Supomo. He stated: “Our Constitution has designed, based on the principles of kinship, not based on understanding of individuals, which we have rejected. Statement of to assembly and associate in the Constitution is the systematic understanding of individuals, therefore, to assert the right to convene and organize in our Constitution will challenge the systematic of kinship understanding<sup>2</sup>.”

The statement was in line with the opinion of Ir. Sukarno, who rejected the idea of individualism or liberalism. With the emphasis on the understanding of kinship, it is expected that citizens no longer question their rights but they would be more concerned with other people, so that they will be more questioning their obligations as citizens.

Otherwise, two figures struggling for human rights were Moh. Hatta and M. Yamin. Both of them opposed Ir. Soekarno and and Supomo’s statements. Moh. Hatta’s reason was that the state would be a state power if the citizens do not have individual rights. Such concerns were presented in the meeting of Committee for Preparatory Work for Indonesian Independence, the statements were "Indeed, we must oppose individualism... We establish a new state on the foundation of mutual cooperation and results of togetherness. But one thing I worry about, if no one belief or the insured to the people in the Constitution that the right to vote ... Let us pay attention to the conditions that make a country that we do not become a state power"<sup>3</sup>. State power means is a country that has very wide powers so as to trigger the absolute and dictatorial governance as expressed by Thomas Hobbes.

Moh. Hatta’s opinion was supported by M. Yamin who wanted the rights of the people because the right is one important thing that should be protected by the state. M. Yamin’s statements that reinforced Moh. Hatta’s opinion were as follow: "In order for the rules of civil liberty are put into the Constitution the country, I reject all reasons presented for not putting it .... I just ask for attention really, because we are talking about people's rights. If this is not clear in the basic law, there is a mistake in the constitution; constitutional error, error basic law, the enormous sin to the people who are looking forward to the rights from the republic; for example on the rights which are mapped to the citizens who will receive it, as well as residents will be protected by the republic"<sup>4</sup>. Through debate shelf the meeting of Committee for Preparatory Work for Indonesian Independence finally agreed to incorporate human rights in the Constitution under Article 27, Article 28, Article 29, Article 30, and Article 31, which is depicted in Table 1.

**Tabel 1 Human Rights in the Constitution of 1945 before Amendments**

Articles	Statements of the Articles
Article 27	- Protection and equal status before the law.
paragraph (1)	- Equal status in the government.
Article 27	Right to work and have a decent living.
paragraph (2)	
Article 28	- Freedom of assembly and of association.
	- Freedom to express opinions and thoughts in writing or verbally.
Article 29	- Right of religion/beliefs.
	- Right to worship according to religion/beliefs.
Article 31	Right of education.

<sup>1</sup> Syafoedin Bahar. 1995. Risalah Sidang BPUPKI dan PPKI Jakarta. Sekretariat Negara. Hlm.259

<sup>2</sup> Ibid. Pg.47

<sup>3</sup> Ibid. Pg.48

<sup>4</sup> Ibid. Pg.28-29

The constitution does not set the prohibition of discrimination explicitly. However, in the constitution there are several articles regulate equality, such as the equal position before the law and government. Related to the rights in employment there is one article only, that is Article 27 paragraph (2) which states that "Every citizen has the right to get a job and a decent living based on humanity". Equality is generally divided into two, namely the formal equality and substantive equality. Formal equality as expressed Aristotle is treating people as equals, equating same and distinguish different<sup>1</sup>. Substantive equality realized through through legal mechanisms, such as affirmative action<sup>2</sup>.

### **Human Rights and Discrimination in the Constitution of the Republic of Indonesia States of 1949**

Proclamation of independence was not the end of Netherlands colonialism. Netherlands kept assaulting and attempting to retake the colonies. Various negotiations were held. And finally Round Table Conference (RTC) in 1949 could end decades of conflict between Indonesia and the Netherlands. One of the main points was that Dutch agreed to recognize the independence of Indonesia if Indonesia was a federal state. Indonesia approved it and changed the shape of the country into a federal state which affected the constitution being used. Therefore, Constitution of Federal Republic of Indonesia Year 1949 was formulated.

Constitution of Federal Republic of Indonesia Year 1949 set about human rights more broadly, as set out in Chapter I Section V of the Rights and Fundamental Human Freedoms listed in Article 7 to Article 33. The rights to get job and fair treatment in employment were also regulated in the Constitution of the Republic of Indonesia Year 1949 Article 27 paragraph (1) and paragraph (2). Article 27 paragraph (1) stated: "Every citizen, with the terms of ability, has a rights to work. Everyone has the right to freely choose a job and the right of the fair labor terms".

The paragraph indicates the protection for workers to choose or work in accordance with the capability and expertise and to get fair employment terms. Fair employment terms show no distinction or discrimination that can be harmful to individuals or specific groups. Further, paragraph (2) stated that: "Anyone who does work on the same things, are entitled to fair remuneration that ensures his life along with his family, commensurate with human dignity". Paragraph (2) refers to the system of remuneration for workers that should be fair, in accordance with the position so that the wages can be used to provide for the family.

At that time the Constitution founders had also been thinking about the importance of labor organizations as aspirations channelling of the workers. Then it was formulated in Article 28, that: "Everyone has the right to establish labor unions and sign-in to preserve their interests".

Thus in terms of employment the Constitution of Federal Republic of Indonesia Year 1949 is more concrete compared to 1945. Constitution of Federal Republic of Indonesia Year 1949 set about employment in 2 Articles consisting of 3 paragraphs. On the other hand, Constitution of Republic of Indonesia of 1945 set only in 1 paragraph. Some important phrases in Constitution of Federal Republic of Indonesia Year 1949 that provide more concrete protection are entitled to choose a job, entitled to get fair terms, and labor unions. The right to choose the work indicates that every citizen can choose a preferred or desired job, including changing jobs to choose a desired one. The right to get a fair condition in the job also has a deep meaning, that is the enactment of same or equal treatments for all citizens in fulfilling the requirements or qualifications specified.

Furthermore, human rights are regulated in Constitution of Federal Republic of Indonesia Year 1949 Article 32 paragraph (1): the determination of the rights of freedom or boundaries in the constitution aimed at ensuring the recognition and respect for the rights and freedoms of others in order to create peace, decency, and general welfare. The complete sound is as following: "Regulation of the law on the application of the rights and freedoms described in this section, if necessary, will set the boundaries of the rights and freedoms, but it is solely to ensure the recognition and respect the rights and freedoms of others that must be there, and to fulfil fair conditions in order to create peace, decency, and the general welfare in a democratic alliance".

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<sup>1</sup> Catharine A. MacKinnon. 2006. Sex equality under the Constitution of India: Problems, prospects, and "personal laws. *International Journal of Constitutional Law* Vol.4 Issue 2. Online <https://academic.oup.com/icon/article/4/2/181/722101/Sex-equality-under-the-Constitution-of-India>. Accessed February 12, 2017. Pg.182.

<sup>2</sup> Anne Smith. 2014. Equality constitutional adjudication in South Africa. *African Human Rights Law Journal* Vol.14 No.2. Online <http://www.ahrj.up.ac.za/smith-a>. Accessed on 13 February, 2017.

### **Human Rights and Discrimination in Provisional Constitution of 1950**

Constitution of Federal Republic of Indonesia Year 1949 was in force only less than one year. After the agreement of the state leaders eventually form the country was back to a unitary state that had implications for the Constitution being used. Since August 18, 1950 Indonesia was back into the unitary state and used Temporary Constitution (Provisional Constitution of 1950). This constitution set human rights broader, as many as 47 articles. Employment field was stipulated in two articles and five paragraphs.

The substances of Constitution of Federal Republic of Indonesia Year 1949 and Provisional Constitution of 1950 about employment are quite the same. Article 28 paragraph (1), (2), (3) and (4) provide the freedom to get a job corresponding the skill, the right to employment and fair labor terms, the right to get an equal wage for the same types of job and the contractual arrangements that are just as good, and the right to get fair wages to support the family life.

Labor terms become important things that must be considered. Therefore, they are set in 2 different paragraphs. Article 36 of Provisional Constitution of 1950 governs social security and certainty in labor terms, and the prevention of unemployment. The detailed article is: "The authority promotes certainty and social protection, especially ensuring and guaranteeing good labor requirements and labor conditions, the prevention and eradication of unemployment and organizing supplies for the old days and the maintenance of widows and orphans."

Furthermore, in Article 37 paragraph (1) regulates the authority or state efforts to improve the welfare of the people and ensure the degree of life that is incompatible with the dignity of humanity. Some important things pertaining to human rights in the field of employment set out in Constitution of Federal Republic of Indonesia Year 1949 and Provisional Constitution of 1950 are: (a) the freedom to get a job according to ability or aptitude, (b) the freedom to choose a job someone likes, (c) the right to obtain fair terms of job, (d) the right to get an appropriate wage in accordance with the performance, (e) the right to gain a decent wage so that it can be used to provide for his family, (f) the freedom to establish labor unions as organizations in channelling aspirations and struggling for their rights.

The Provisional Constitution of 1950 from the beginning it was planned only to be used for a while. After calm conditions was established a special committee or body that would draft or create a more complete, better, and more perfect new constitution. The Constituent Assembly which was assigned to form the Constitution did not go successfully carry out its duties until 1959. In one hand, in the country there was turmoil due to rebellions of left wing or right wing as well as inter-party conflicts which were more concerned on the group or fraction itself. At the end, the President issued a Presidential Decree of 1959. One of the contents of the Presidential Decree is back to the Constitution of 1945. Thus since July 5, 1959 Indonesia reuse the Constitution of 1945 as the State Constitution.

### **Human Rights and Discrimination in Constitution of Republic of Indonesia after Amendments**

Waves of reformation have implications for the demand to make changes to the Constitution. One of the main parts of which is to add quite a lot of protection of human rights. At the General Assembly of the People's Consultative Assembly on October 19, 1999 Faction-Indonesian Democratic Struggle Party expressed an opinion delivered by Laksamana Sukardi that equality and non-discrimination with regard to the proposed changes would be implemented. There should be equality and balance among state institutions, the President and the House of Representatives, as well as the affirmation of human rights in the constitution.

This opinion indicates a desire to promote human rights as the demands of the modern state. Thus the inclusion of human rights in the constitution is strongly influenced by international conventions or the struggle for human rights happening in this world. In the proposal it is stated that there will be constitutional guarantees of equality of rights and obligations of citizens without any discrimination on any basis, not only on the basis of religion, ethnicity, gender, but also other forms of discrimination.

The word discriminative is also addressed by Fraction of National Awakening related to the requirement becoming a President. In the constitution of 1945 it is stated that the President is the native Indonesia. The opinion is delivered by Arifin Junaidi as follows: "... we understand with a fairly short time, PAH III and Commission C can resolve some of the provisions that are considered urgent to be amended. About Article 6 of Constitution of 1945 which the statement is that Indonesian President is an indigenous person, Fraction of National Awakening found that the Assembly's decision to seek a formula sentence to this article should be

absolutely neutral, non-discriminatory, and not interpretive and puts the Indonesian people equal to each other ...<sup>1</sup>."

The members of the Assembly show tremendous attention to equality and rejecting discrimination. The opinion is supported by the faction of joint Party, stating that Article 6, paragraph 1 is discriminatory based on race and all factions agreed to abolish these forms of discrimination.

In the meeting of the amendment of Constitution of 1945, faction of Envoy Group agree with the principles that must be followed in presenting the formulation of human rights and citizens as stated by Valina Subekti. The 6 principles<sup>2</sup> are: first, the agreement is international and the development of the discussion as a national agreement. International agreements binding the countries that have signed it, including: (a) Declaration of Human Rights, (b) Covenant on Civil and Political Rights and the Covenant on Economic, social and cultural rights, (c) the declaration of WIMA in 1993, (d) Universal Declaration of Human Responsibilities. The national agreements are: (a) People's Consultative Assembly Decree No.17/1998 on human rights, (b) Law Number 39 Year 1999 on Human Rights, (c) Outline of State Policy of 1998, (d) Constitution of Federal Republic of Indonesia Year 1949, (e) Provisional Constitution of 1950, (f) formulation of the Constituent Assembly.

The Second<sup>3</sup> principle is the inclusion of non-derogable rights, which are the rights that cannot be revoked or reduced under any circumstances and by anyone. The rights should be formulated and get full protection from the state. The rights include the right to live, the right not to be tortured, the right to freedom of conscience, freedom of religion, the right not to be enslaved, the right of recognition as a person before the law, and the right not to be prosecuted under retroactive laws.

The third<sup>4</sup> principle is the rights of development such as the right of citizens to obtain decent and humane welfare, and to obtain a healthy environment. Further, customary rights should be included in the constitution.

The fourth principle is the affirmation of gender equality and the constitutional guarantee of the principle of gender equality without discrimination based on gender. It is based on an agreement in the Vienna Convention that has been signed by Indonesia along with 170 other countries. The content of the agreement is the recognition that women's rights are parts of human rights which are inalienable, integral and inseparable. Protection against women is the same as Article 33 of the Ugandan constitution which prohibits law custom or degrading, welfare or interest of women<sup>5</sup>.

The fifth principle is the affirmation of children rights. People's Consultative Assembly Decree No.17/1998 provides for the protection of children. It needs to be coupled with the right of love, right of optimally self-development and right to access education maximally.

The sixth principle is the affirmation of limitation principle, that is someone's freedom is limited by the freedom of others. Freedom here does not mean the freedom with no limit.

The amendments of Constitution of 1945 are made by the People's Consultative Assembly through PAH Meeting. Most of the proposals delivered by the various fractions are suggesting the inclusion of the provisions contained in People's Consultative Assembly Decree No.17/1998 on human rights into the Constitution of 1945. It is as presented by Zain Badjeber, a member fraction of unity and development party who summarizes the views of members of other factions. Yusuf Muhammad, a member of Fraction of National Awakening gives an opinion as follows: "The manifestation of egalitarianism in carrying out our life of nation and state will constitute a solid foundation for efforts to enforce the law, human rights, and awareness of living together. The embodiment of the spirit of equality in the deliberations shall be concretized in the articles of the Constitution, so

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<sup>1</sup> Miftakhul Huda, Nanang Subekti, Lulu Anjarsari, P. Dodi Haryadi. 2010. *Naskah Komprehensif Perubahan Undang-Undang dasar Negara Republik Indonesia Tahun 1945, Latar Belakang, Proses, dan Hasil Pembahasana 1999-2002. Buku I Latar Belakang, Proses, dan Hasil Perubahan UUD 1945*. 2nd Edn. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi. Jakarta. Pg.183

<sup>2</sup> *Ibid.* Pg.168-169.

<sup>3</sup> *Ibid.* Pg.169

<sup>4</sup> *Ibid.*

<sup>5</sup> Manisuli Ssenyonjo. 2007. *Women's Rights to Equality and Non-discrimination: Discriminatory Family Legislation in Uganda and the Role of Uganda's Constitutional Court*. International Journal of Law, Policy and teh Family Vol.21 Issue 3. Online <https://academic.oup.com/lawfam/article-abstract/21/3/341/952362/Women-s-Rights-to-Equality-and-Non-discrimination?redirectedFrom=fulltext>. Pg.341.

that arbitrariness can be prevented, freedom and rights can be maintained and togetherness remains to be realized"<sup>1</sup>.

Those statements are expecting the equality (egalitarian) in various areas of life become the basis for upholding human rights and law set forth in the Articles so as to provide certainty. The end goal will build mutual respect and create togetherness. The hope is that individual rights would strengthen togetherness. Further Yusuf Muhammad stated: "In terms of recognizing and respecting human rights need to give a note that the important thing is the willingness to give the rights of others. I hope the articles on human rights should not result in urging people to demand their rights, but to encourage people to give other's rights, '*adaul huquuq*' granting the rights of others. And second, the articles on human rights are encouraged to be able to withstand or prevent acts that can result in harm, hurt others '*kafful adza*'. Thus a formula needed in our Constitution is how to keep the right of each party can be administered optimally with no result in disruption of the other party "<sup>2</sup>.

Inclusion of human rights according to that view is expected to make each person think more to give rights of others rather than thinking for his own rights. Therefore, each person will not harm or hurt others. This view is almost identical Supomo's opinion in the meeting of Committee for Preparatory Work for Indonesian Independence, namely: "In a system of kinship, the attitude of citizens is not an attitude that is always asked: what are my rights, but an attitude of asking what are my obligations as a member of a large family, the state of Indonesia. What is my status of my blood as a family member (family) and as a member of the family area, such as a member of a village, blood, country, East Asia Highway and the world? This is the thought we must always remember"<sup>3</sup>.

Yusuf Muhammad's opinion is a consciousness of each person to give the rights of others, while Supomo emphasizes an awareness of individuals to perform their obligations. Essentially, both opinions emphasize on behavior in giving respect to others and not selfish. This is the meaning of human rights or the rights of individuals in its application in Indonesia.

In aspirations channelling in areas there are dissents with regard to the substance of human rights and the scope. Some people disagree with the inclusion of human rights in the constitution. Disagree opinions are then written in detail including the reasons in order to more easily adjust to the conditions of Indonesia that are different with western human rights that are universal. However, these opinions are only minority. The majority support the inclusion of human rights more fully in the Constitution. This can be seen from all participants of the meeting of the Working Committee of the People's Consultative Assembly, the invited experts, as well as the various elements of other organizations in the community.

Human rights materials in Constitution of 1945 before the amendments can be seen in table 1 and after the amendments can be seen in table 2. The tables show striking differences related to the descriptions of the articles containing the protection of human rights. After the amendments the articles are more concrete and specific, in contrast to ones before the amendments which are still very broad.

**Table 2. Human Rights in the Constitution of 1945 after Amendments<sup>4</sup>**

Articles	Statements of the Articles
Article 28 A	Right to life and sustain life and livelihood
Article 28 B	- Right to have a family, to have children through legal marriage. - The child's right to survival, grow, and thrive without violence and discrimination.
Article 28C	- Right to develop himself.  - Right of education.  - Right to take benefits from science and technology.  - Right to advance himself.
Article 28D	- Right of security, protection and legal certainty and equal treatment before the

<sup>1</sup> *Ibid.* Pg.225.

<sup>2</sup> *Ibid.* Pg.226.

<sup>3</sup> *Ibid.* Pg.28

<sup>4</sup> Mahkamah Konstitusi Republik Indonesia. 2014. *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia. Jakarta.

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	law
	<ul style="list-style-type: none"><li>- Right to work and receive remuneration, fair and proper treatment in the employment relationship.</li><li>- Equal right in the opportunity to participate in government.</li><li>- Right of citizenship status.</li></ul>
Article 28E	<ul style="list-style-type: none"><li>- Right of religion and to worship according to the religion.</li><li>- Right to choose education and teaching.</li><li>- Right to choose a job.</li><li>- Right to choose where to stay, leave it, and come back.</li><li>- Right believes the trust.</li><li>- Right of expressing attitude appropriate conscience.</li><li>- Right of association, assembly, and giving opinions.</li></ul>
Article 28F	Right to communicate and obtain information from multiple channels or sources available.
Article 28G	<ul style="list-style-type: none"><li>- Right of protection of self, family, honor, dignity, and property.</li><li>- Right of safety and protection from threats.</li><li>- Right not to be tortured or humiliated the dignity as human beings.</li><li>- Right of political asylum.</li></ul>
Article 28H	<ul style="list-style-type: none"><li>- Right to physical and spiritual prosperity.</li><li>- The right to good and healthy environment, and health services.</li><li>- Right to have the ease and special treatment to get the same opportunities and benefits to achieve equality and justice.</li><li>- The right to social security.</li><li>- The right to self-development as a whole as a dignified human being.</li><li>- The right to private property and can not be taken arbitrarily.</li></ul>
Article 28I	<ul style="list-style-type: none"><li>- Right to life, not to be tortured, freedom of thought and conscience, religion, no enslavement, recognition as a person before the law, not be prosecuted based on retroactive law which is human rights that can not be reduced under any circumstances.</li><li>- Right to be free from discriminatory treatment on any basis.</li><li>- Right of protection from discriminatory treatment.</li><li>- Right of indigenous people.</li><li>- The government is responsible to protect, promote, uphold and fulfill human rights.</li></ul>
Article 28J	<ul style="list-style-type: none"><li>- Obligation to respect other people rights.</li><li>- Liabilities subject to the law in carrying out the rights and freedom.</li></ul>

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Universal Declaration of Human Rights and other international covenants on human rights are quite influencing Constitution amendment. The changes are protection of children from violence, protection of civil and political rights, and protection in relation to employment. In principle, the provisions of the old and new constitution are almost the same. Some new ones include child protection, and the right to have children and marriages.

In particular, the adoption of international covenants is also seen in several paragraphs regulating the prohibition of discrimination that are explicitly stated in Article 28B and 28I. Article 28 specifically prohibits discrimination against children, while Article 28I deals with the protection of a wide range of discriminatory treatment for all people. Nursyahbani Katjasungkana's proposal relating to the protection of children is: "That the state recognizes, guarantees, and provides protection to every child of the right to live, the right to survive, growing rights, the right to be free from mistreatment, and discriminatory acts by any reason and the right to participate in determining the fate"<sup>1</sup>.

The proposal prohibits discrimination on any grounds, without specifying the types of discrimination, thus it allows greater protection. Related to the formula to the children protection, Haryanto Taslam, a member of Fraction Indonesian Struggle Democratic Party responded as follows: "Wait... wait a minute, I want to respond to it if the formula was indeed referring to the existing designs, I want we see Article 28I, Sir. Article 4 states that vulnerable people such as children and poor and internally displaced persons are entitled to greater protection. Well, there are the words greater protection for their human rights. This is related to the rights of children "<sup>2</sup>. Wait, even women's rights are already here, in paragraph (3). Perhaps it can be able to accommodate the ideas proposed earlier concerning children and women"<sup>3</sup>.

Based on the investigation within minutes of the amendments meetings of Constitution of 1945 there is no debate on the word discrimination in Article 28 of the Constitution of 1945. None of the members of the meeting is questioning the meaning of discrimination or what is meant by discrimination listed in some paragraphs of Constitution of 1945. The debates or proposals focus more on the things or subjects that will be given protection or guarantee of human rights. Regarding the type of prohibited discrimination it seems quite clear as regulated in Article 28 B and Article 28 paragraph (2) which states that everyone has the right to be free from discriminatory treatments "of any kind" and is entitled to protection from such actions. The word on any basis shows that not only discrimination because of gender, ethnicity, race, or religion, but also any kinds of discriminatory acts.

#### 4. Conclusion

There are four conclusions in this study:

1. Constitution of 1945 regulates human rights briefly and generally in Article 27, Article 28 and Article 29. Employment is stipulated in one article which is in the form of protection given to citizens to get jobs and a decent living.
2. Constitution of Federal Republic of Indonesia Year 1949 sets human rights in 27 articles. Employment is stipulated in 2 articles which contain the rights of citizens to get a job according to the ability and freedom to choose jobs and fair terms of labor, equal rights and fair wages for equal work and the right to establish labor unions.
3. Provisional Constitution of 1950 sets human rights in 47 articles, broader than the previous constitution. Rights in the field of employment is about the freedom to get a job related to the skill, right to choose a job with fair terms of labor, right of equal payment for equal work, right of fair wages, and right to establish labor unions.
4. Constitution of Republic of Indonesia of 1945 after the amendments stipulates human rights in 10 articles. On employment the constitution particularly provides protection in the forms of right to get a job, right to work, right to choose a job, right to earn rewards as well as fair and proper treatments in the employment relationship. Prohibition of discrimination in any cases also explicitly prohibited, including in the employment field.

<sup>1</sup> Miftakhul Huda, Nanang Subekti, Lulu Anjarsari, P. Dodi Haryadi. *Op. Cit.* Pg.312

<sup>2</sup> *Ibid.* Pg.343.

<sup>3</sup> *Ibid.*

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