



Mapping International Laws on Human Rights in the 1945 Constitution of the Republic Indonesia

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Abstract

Human rights are granted by all people regardless of discriminatory differences. In this sense, human rights must be respected, guarded, and protected by individuals, broad society, and the State. Generally, human rights are outlined in several international instruments such as Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social, and Cultural Rights 1976. From a national perspective, Indonesia has played its roles in addressing and combating human rights violations by adopting some international provisions into the 1945 Constitution of the Republic Indonesia, Article 28 and ratifying several international instruments on human rights. Recognizing the correlation between international and national law, the study intends to examine to what extent Indonesia has adopted human rights material in international provisions into its constitution. The result of this study shows that almost all contents on human rights in article 28 of the 1945 Constitution of the Republic Indonesia are also contained in the Universal Declaration on Human Rights 1948. Several provisions on the International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights 1976 seem very similar to provided contents on the Universal Declaration on Human Rights 1948. Therefore, it is undebatable that International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights also influence the inclusion of human rights contents in the 1945 Constitution on the second amendment in 2000.

Keywords: Human Rights, The 1945 Constitution, International Laws, UDHR, ICCPR, ICESCR.

1. Introduction

1.1 Human Rights Introduction

Human rights are absolutely inherent in each individual since they carry their natural rights from birth. Moreover, human rights are granted by all people regardless of discriminatory differences (Selyawati & Dewi, 2017). In this sense, human rights must be respected, guarded, and protected by individuals, broad society, and the State (Wilujeng, 2013). Therefore, it is understood that human rights are playing their role in maintaining the safety of human existence as a whole and balancing between individual and public interest. According to historical facts, human rights arose due to humans' oppression by tyrannical monarchs, raising awareness of human dignity. Although human rights were only formulated explicitly in the 18th century, the legal aspects and understanding have formerly existed in human history (Muhammad, 2018, p. 3). Human rights are a fundamental and universal predicament that has subsisted for thousands of years. The struggle against Jewish slavery in Egypt at the prophet Moses was fundamentally supported by recognition for justice to uphold human rights (Warjiyati, 2018, p. 127).

Additionally, the history of human rights has subsisted in the Hamurabi Law, which occurred in the Babylonian kingdom era in 2000 BC, the Solon era in 600 BC in Athens. Supporting the fact, Pericles was an Athenian representative who sought to guarantee justice for the poor, the figure of Socrates, Plato, and Aristotle that expressed their thoughts on human rights related to the obligations or duties of the State. In its development, human rights provisions were outlined on Magna Charta 1215, the French Revolution 1789, and the United States Declaration of Independence 1776. These instruments declare that human rights are bound to be just and equal. Moreover, some reputable US politicians are known to be the figures human right defender and anti-

slavery, such as Abraham Lincoln and Franklin D. Roosevelt (Wilujeng, 2013).

In its implementation, international regulations regarding human rights have existed since the period of armed conflict, which is regulated in unwritten war laws or customary war laws (Wuerth, 2017). These laws are then set out in The Hague and Geneva Conventions. Meanwhile, human rights provisions in peacetime are regulated in the Bill of Human Rights, which includes The Universal Declaration of Human Rights (UDHR) as is the first general statement from the international community regarding human rights; as well as three following instruments, namely, The International Covenant on Civil and Political Rights (ICCPR) which confirms human rights principles in the civil and political fields, The International Covenant on Economic, Social and Cultural Rights (ICESCR) which imposes human rights in the economic, social sector, and culture, and The Optional Protocol The International Covenant on Civil and Political Right which consists of Optional Protocol I (explaining the authority and form of oversight mechanisms for the application of the ICCPR and the procedure for complaints of victims of human rights violations) and Optional Protocol II (aimed at abolishing the death penalty under the legal jurisdiction of a State party). Prior to the Bill of Human Rights, some human rights instruments were born since medieval times, such as the Magna Charta in 1215, the Petition of Rights in 1628, the Declaration of Independence in 1776, and the Declaration *Droit de l'homme et du Citoyen* in France in 1789 (Pratiwi, 2018).

Furthermore, the national regulation regarding human rights originated from the existence of human rights cases in Indonesia, which aroused the formulation of legal instruments. Although, the struggle to uphold human rights in Indonesia had started since the colonialism era, and mass human rights violations have occurred during these unfortunate times faced by Indonesians (McGregor & Setiawan, 2019). Moreover, the end of the New Order era marked the beginning of the emergence of human rights instruments that were universally prevailed to all Indonesian people. Examples of cases that form legal instruments include cases in Aceh, Maluku, human rights violations in East Timor, Papua, Semanggi, Tanjung Priok, and Poso, which prompted national regulations on human rights in the belief that there will be fewer cases of human rights violations and human rights developments in Indonesia can be accomplished in a proper direction (Supriyanto, 2016).

As one of the subjects in the international community, Indonesia has played its roles in addressing and combating human rights violations in its area by upholding human rights protection material in the 1945 Constitution of the Republic Indonesia (Article 28). Several concrete efforts conducted by the Indonesian government to promote and protect human rights are reflected in Indonesia's active participation as United Nations member states and synergized with Indonesia's role in various global forums that discuss international purposes in granting human rights for every people (Marzuki, Ismail, & Faridy, 2020). Moreover, the State of Indonesia has certainly made various forms to guarantee human rights. The previous argument can be proven; for example, Indonesia has ratified several international human rights conventions, as follows (Rompis, 2017):

- a. The Convention on Women's Political Rights, ratified by Law No. 68 of 1958;
- b. The Convention on the Elimination of All Forms of Discrimination against Women, ratified by Law No. 7 of 1984;
- c. The Convention on the Rights of the Child, ratified by Presidential Decree No. 36 of 1990;
- d. The Anti-Apartheid Convention in Sports, ratified by Presidential Decree No. 48 of 1993;
- e. The Convention Against Torture Cruel, inhuman and degrading to human dignity, was ratified by Law no. 5 of 1998;
- f. The Convention on the Elimination of Racial Discrimination (CERD), ratified by Law No. 29 of 1999.
- g. Several International Labor Organization (ILO) conventions on workers' rights.

Indonesia's ratification act indicates that the Indonesian government, in its consent, is bound to implement these ratified instruments. In other words, Indonesia recognizes its role in promoting human rights both internationally or nationally (Warjiyati, 2018).

1.2 The Importance of the Problem

If you look at the regulations of International Law and National Law that discuss human rights, it can be seen that there are various similarities. This proves that there is an association between International Law and National Law. The association between the two legal systems contributes to each other and has their respective contributing roles in both International Law-National Law and National Law-International Law. Therefore, it can be concluded that International Law and National Law cannot be separated. Considering that a State or nation cannot stand alone, it is inevitable that there will be influence from outside the State that can also occur while drafting a State's constitution. The author examining the importance of addressing the problem through several considerations, as follows:

First, the UDHR declares that “human rights are universal – and must be enjoyed by all people, no matter who they are or where they live.” Therefore, it is understood that all nations, including Indonesia, share the same intention to protect their citizen's rights. In other words, the substantive material on human rights among these countries will be deemed similar to one another. Second, the studies that have been carried out by other researchers in this discussion are limited to the position of international law in the national legal system and the form of an International Agreement. Therefore, this research will complement previous research by focusing on international law provisions in human rights influence on the Indonesian constitution.

1.3 State of Hypotheses

This study will further discuss the extent of International law provisions on human rights influence the inclusion of human rights substantive material in the 1945 Constitution of the Republic Indonesia. However, the Indonesian legal system is based on the principle of state sovereignty and is the embodiment of independence to regulate and organize the nation-state's life without interference from other states (the right of self-determination). Moreover, in the ideological perspective regarding the monism and dualism theory, it is rather interesting to outline that Indonesia has not firmly declared its determination to embrace the monism of dualism theory. Therefore, the author intent to map international provisions related to human rights synchronized with the substance of Article 28 of the 1945 Constitution to examine to what extent Indonesia has adopted human rights material in international provisions into its constitution.

2. Method

The research method used in this study's scope is the normative juridical research method, using descriptive analysis method, with the types and sources of secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Based on the type and source of the data, this research is termed library research. In analyzing this study is guided by the law by using a systematic method. Secondary data as a normative research approach that seeks and uses literature such as scientific writings and scientific journals, books on human rights as references and also studies international treaties relating to human rights. Data collection methods and techniques as a series of writing activities in this study are aimed at collecting legal materials, which are then processed, then linked to legal concepts, and the results obtained are outlined in the answers to the problems.

3. Result

The study aims to examine to what extent Indonesia has adopted human rights material in international provisions into its constitution. This study will discuss the relationship between international law and national law, the history of human rights development in the Indonesian Constitution, and mapping international law provisions on human rights in the 1945 Constitution of the Republic Indonesia.

3.1 Theoretical perspective on the relation between International Law and National Law

The relationship between International Law and National Law generates a difference in views that are well known and applicable in understanding the relationship between International Law and National Law, namely (Kusumaatmadja, 2015):

- a. The view of voluntarism, forming a base of the international law implementation, to the question of whether or not there is international law on the State's will
- b. provide the objectivist view, which considers the existence and application of international law outside the State's will.

These two perspectives were known as the classical theory, namely, the theory of monism and dualism (Figure 1). The monism theory states that international law and national law are two aspects of a legal system. Meanwhile, the dualism theory states that International Law and National Law are two different legal systems (Hasim, 2019, pp. 174-175). The relationship between International Law and National Law are inevitably related. International law has proven to be influencing the State's constitution to countries in the world. In the formulation of its constitution, some countries are influenced by international law, such as Japan and the Netherlands. The constitutions of these countries were influenced by foreign law, which then, after the 1600s, were known as international law.

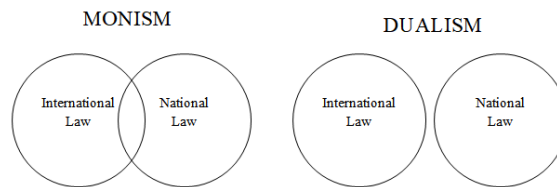


Figure 1. Monism and Dualism Theory

Additionally, the countries that experienced their colonization generally had more influence in drafting their constitution, for instance, the Indian State, whose constitution is directly influenced by the British Constitution. The effect of colonization is also felt by Indonesia's constitution, which resulted in International Law being implanted or introduced by the colonizers to the Indonesian people. Moreover, in its development, International Law does not only affect a country, but States can also adopt these provisions into their national law, especially regarding the sources of international law (Hasim, 2019).

3.2 International Laws on Human Rights

The conception of human rights subsisted thousands of years ago by nations such as Jews and Babylonians, some of which were even stated in the holy book and the travail by indigenous peoples to fight for their lives. These events were understood as part of a moral and religious movement, not as a juridical concept. However, the juridical concept began to develop after establishing the Magna Charta on June 15, 1215, in England, consisting of 63 Articles. Moreover, this convention discusses the limitation of the king's power and human rights are more important than the king's sovereignty. Since then, the effort to protect human rights has commenced. As happened in 1628, there was a Petition of Right submitted by Great Britain's nobility to the king in front of parliament. This petition was signed by King Charles I, which, then in 1679, the King Charles II's reign, the Habeas Corpus Act statute was born, served as the fundamental law in the federal and state constitutions in England. Meanwhile, in the United States, there is a Declaration of Independence on July 4, 1776, as a charter of human rights and a declaration of independence announced by 13 states in acclamation. In France, a directive was born, which declared the right to freedom, equality, and fellowship on July 14, 1789, namely the Declaration *des Droit de l'homme et du Citoyen* (Sinaga, 2013).

However, in the 17th and 18th centuries, the rights formulated were influenced by the notion of law, which was limited to political rights. These events commenced until the Second World War began. In 1946, the concept of human rights was initiated, which contained other rights with a broader scope and universally guaranteed. This marked the primary and most essential dynamics of human rights development. The instruments that guarantee universal human rights include (Pratiwi, 2018):

- a. The Universal Declaration of Human Rights (UDHR), which is the first general statement from the world community on human rights on December 10, 1948, through the UN General Assembly held at Chaillot Palace, Paris, which consists of 30 articles. From 58 countries represented in the general assembly, 48 countries agreed, eight countries abstained, and two other countries were absent.
- b. The International Covenant on Civil and Political Rights (ICCPR), which confirmed the principles of human rights in the civil and political fields in its concurrence in 1951, the UN General Assembly mandated the UN Human Rights Commission to draft a Covenant on civil and political rights December 16, 1966, and it came into effect on March 23, 1976 consists of preamble and Articles covering 6 CHAPTERS and 53 Articles.
- c. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which regulates human rights in the economic, social, and cultural fields, came into force in January 1979 and ratified by 35 countries on December 16, 1966, and entered into force on January 3, 1976, with opening and including 5 CHAPTERS and 31 ARTICLE.

As the most crucial instrument on international human rights development, these instruments have become the primary guideline in drafting other countries' human rights instruments in their national laws, including the State of Indonesia, proven in the following examination point.

3.3 The History of Human Rights Development in the Indonesian Constitutions

Article 1 paragraph (3) of the 1945 Constitution declares that Indonesia is a state based on the law (*Rechtstaat*). Friedrich Julius Stahl stated four elements of *rechtstaat*, namely: a) Protection of Human Rights; b) Separation or distribution of powers to guarantee those rights; c) Government based on regulations, and d) Administrative court in disputes. Therefore, it can be understood that human rights become a part of the constitution (law of a state) and consequently must be protected by the constitution itself (Brainislaw, 2019). Recognition of human

rights in Indonesia was marked by the establishment of the Federal Constitution of Indonesia (*Verenigde Staten van Indonesië*, or *Republik Indonesia Serikat*, abbreviated as RIS), in 1949, or took place one year after the enactment of the 1948 UHDR. The Federal Constitution contains 22 articles on human rights (Article 7 paragraphs (1), (2), (3)), (4), Article 8, Article 9 paragraph (1) and (2), Article 10, Article 11, Article 12, Article 13 paragraph (1), (2), Article 14 paragraph (1), (2) , (3), Article 18, Article 19, Article 20, Article 21 paragraph (1), Article 25 paragraph (1), (2), Article 27 paragraph (2), and Article 28) in the material of the Federal Constitution. Therefore, the Federal constitution has a strong relation to the implementation of the contents of the 1948 UDHR (Muhammad A. , 2015, p. 204).

Moreover, after the Federal Constitution ends, the Provisional Constitution of the Republic of Indonesia (the 1950 Constitution) was formed with the promulgation of Law no. 7 of 1950 concerning Amendments to the Provisional Constitution of the Republic of Indonesia to become the Provisional Constitution of the Republic of Indonesia, which contains 146 articles. The 1950 Constitution includes provisions of human rights developments, in addition to recognition of individuals as a reflection of human rights, it is regulated that the Human Rights Material in the 1950 Constitution consists of 36 articles, which are divided into two chapters, Part V on Fundamental Human Rights and Freedoms, and Part VI on Fundamental Principles. Fundamental human rights in the 1950 Constitution do not solely include human rights but also human obligations and prohibitions against human rights violations (Muhammad A. , 2015). In the history of the Indonesian Constitution, the Federal Constitution 1949 and the 1950 Constitution, respectively, regulate human rights in detail, since it was determined after the establishment of the Universal Declaration of Human Rights, it can be said that "the Constitution is influenced by the Universal Declaration of Human Rights" (Figure 2). The interconnection between State constitutions and the Universal Declaration of Human Rights is described by Hence van Maarseveen as follows (Atmadja, 2010, p. 199):

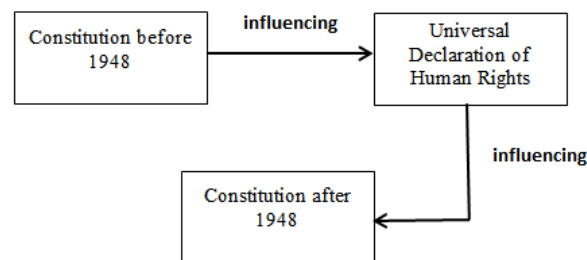


Figure 2. Interconnection between Constitution and UDHR 1948

Prior to Indonesia's independence era, there were differences of opinion between groups regarding the inclusion of human rights in the Indonesian constitution. However, in the end, a compromise was decided to include human rights articles in the constitution with a simple, non-elaborative formula and obliged to be regulated by law. Therefore, before the second amendment to the 1945 Constitution in 2000, the 1945 Constitution contained only a few provisions linked to the notion of human rights. However, in 1988-1990, or during President BJ Habibie's reign, the People's Consultative Assembly of the Republic of Indonesia (MPR RI) Decree No. XVII / 1998 regarding Human Rights were enacted. MPR RI Decree contained the Indonesian Human Rights Charter in a special assembly of the 1998 MPR RI. The special assembly was also resulted in the enactment of Law No. 39 of 1999 concerning Human Rights. The law on human rights 1999 is contained articles on human rights, especially in Article 28A to Article 28J. The enactment of the 1999 law on human rights marked the important gains for the development of human rights in Indonesia (Muni, 2020, p. 71).

In drafting human rights provisions into the constitution, it can be seen that Indonesia has been influenced by various international laws (figure 2 shows that the constitution drawn after 1948 will be affected by UDHR). Apart from the impact of the UDHR influence, it was also due to the demand circumstance related to concerns about humanitarian annihilation as it had happened before and during World War II. These developments ultimately prompted the second amendment, resulted in a particular chapter on human rights, namely CHAPTER XA, which had provided a bright spot that the Indonesian State took part in promoting and protecting human rights values. Compared to other countries' constitutions, this is an achievement for Indonesia's human rights development since not many countries have included a particular and separate section regarding human rights in their constitutions (Muhammad M. , 2018).

3.4 Mapping International Law Provisions on Human Rights in the 1945 Constitution of the Republic Indonesia
 This study aims to prove that, in drafting the Indonesian Constitution, it is inevitable that international law,

whether directly or indirectly, will give its influence since Indonesia is considered an international law subject that aims to contribute to maintaining world order. It is clearly shown in the Paragraph (*Alinea*) IV of the 1945 Constitution *Preamble*, which states that (Arinanto, 2008, p. 80):

“...to form a government of the state of Indonesia which shall protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people and to contribute to the establishment of a world order based on freedom, abiding peace and social justice, the national independence of Indonesia shall be formulated into a constitution of the sovereign Republic of Indonesia...”
 Moreover, the study will provide articles mapping to show the linkages and similarities between the 1945 Constitution of the Republic Indonesia and international human rights instruments, as follows:

Table 1. Mapping International Laws on Human Rights in the 1945 Constitution of the Republic Indonesia

| No | Subject | The 1945 Constitution | UDHR 1948 | ICCPR 1976 | ICESCR 1976 |
|----|--|-----------------------|--|--|--------------------------|
| 1 | The rights of freedom | Article 28 | Article 19 | Article 19 (1 and 2) Article 22 | - |
| 2 | The rights to life | Article 28A | Article 3 | Article 6 | - |
| 3 | The rights to form a family | Article 28B (1) | Article 16 | - | Article 10 (1) |
| 4 | The rights of the child | Article 28B (2) | - | Article 18 (4) | Article 10 (1 and 3) |
| 5 | The rights of education | Article 28C (1) | Article 26 | - | Article 10 (1) |
| 6 | The rights to conduct public affairs | Article 28C (2) | - | Article 25 | - |
| 7 | The rights of recognition and equality before the law | Article 28D (1) | Article 6 Article 7 | Article 14 (1) Article 26 | - |
| 8 | The rights to work | Article 28D (2) | Article 23 | - | Article 6 Article 7 |
| 9 | The rights of political representative | Article 28D (3) | Article 21 | Article 3 Article 25 (b) | - |
| 10 | The rights to a nationality | Article 28D (4) | Article 15 | Article 24 | - |
| 11 | The freedom of thought, religion, worship, and others | Article 28E (1) | Article 18 | Article 18 (1-3) | Article 13 Article 15 |
| 12 | The rights to freedom of belief | Article 28E (2) | Article 18 | Article 18 (1-3) | - |
| 13 | The freedom of peaceful assembly and association | Article 28E (3) | Article 20 (1) Article 29 (2) | - | Article 21 |
| 14 | The rights to communicate and receiving information. | Article 28F | Article 19 | Article 19 (2) | - |
| 15 | The rights of non-interference | Article 28G (1) | Article 12 | Article 17 (1-2) | - |
| 16 | The rights of anti-slavery and political asylum | Article 28G (2) | Article 4 Article 5 | Article 8 | - |
| 17 | The rights to an adequate living | Article 28H (1) | Article 25 (1) | Article 18 | - |
| 18 | The rights to an equal and fair public hearing | Article 28H (2) | Article 10 | Article 14 | - |
| 19 | The rights of social security | Article 28H (3) | Article 22 | - | Article 9 |
| 20 | The rights to own property | Article 28H (4) | Article 17 | - | - |
| 21 | The right to life, liberty, and the security of a person | Article 28I (1) | Article 3 Article 4 Article 5 Article 6 | Article 6 Article 8 Article 18 Article 19 (1-2) Article 22 | - |
| 22 | The rights of non-discriminative treat | Article 28I (2) | Article 2 | Article 4 (1) | Article 2 (2) |

| | | | | Article 24 (1) | Article 26 | |
|----|---|-----------------|------------|----------------|------------|--|
| 23 | Cultural identity and rights of traditional communities | Article 28I (3) | - | - | - | |
| 24 | The State's liability in granting human rights | Article 28I (4) | - | - | - | |
| 25 | The right of others | Article 28I (5) | - | - | - | |
| 26 | Human Rights limitation in the constitution | Article 28J (1) | - | - | - | |
| 27 | Subjections under the law | Article 28J (2) | Article 29 | Article 18 (3) | Article 4 | |

According to the existing table, it can be seen that almost all contents on human rights in article 28 of the 1945 Constitution of the Republic Indonesia are also contained in the Universal Declaration on Human Rights 1948. In constitutional history, the inclusion of human rights contents in the 1945 Constitution commencing from the second amendment on August 18 2000, which appends the human rights content separately in CHAPTER XA the 1945 Constitution from Article 28 to 28J (2). Based on the provided table, it can be concluded that international laws on human rights other than UDHR also impact the contents contained in the 1945 Constitution. This argument supports the previous description by Henc van Maarseveen that the UDHR 1948 will actively influence the instrument drafted afterward. Several provisions on the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1976 seem very similar to provided contents on the UDHR 1948. Therefore, it is undebatable that ICCPR and ICESCR also influence the inclusion of human rights contents in the 1945 Constitution on the second amendment in 2000.

4. Discussion

It cannot be denied that the inclusion of human rights substance into the 1945 Constitution in the second amendment cannot be separated from the human rights issues that occurred at that time, such as the Trisakti and Semanggi cases in May 1998, the Marsinah case, the Talangsari case, *Etc.* The occurrence of constitutional reform from 71 points to 199 provisions, including the inclusion of human rights substances in Articles 28A-28J, considered as the Indonesian State" commitment to fill the requirement of *rechtstaat*. Theoretically, the fundamental rights of human include (Muhammad A. , 2015):

- a. Personal rights, such as the freedom of expression, religion, *Etc.*
- b. Property rights, namely the right to own, buy, sell and use the property under their ownership.
- c. Human rights to get equal treatment in law and government are commonly known as "equality before the law".
- d. Political rights, such as the right to vote (to vote and be elected in general elections), the right to regulate political parties, *Etc.*
- e. Social and cultural rights, such as the right to choose education, develop culture, *Etc.*
- f. Human rights to receive judicial procedures and protection or "procedural rights".

The fundamental rights above have been regulated in a plethora of international laws, namely UDHR, ICCPR, and ICESCR. Indonesia as an international subject has a role in enhancing and protecting human rights. Substantially, the human rights material in the 1945 Constitution has many similarities with the contents of the Universal Declaration on Human Rights, as in several of the elaboration of the articles below (Selyawati & Dewi, 2017):

Article 28D (1) of the 1945 Constitution

"*Setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama dihadapan hukum*" (Translated: "Everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal before the law.") UDHR 1945 Article 6 "Everyone has the right to recognition everywhere as a person before the law."

Article 28D (2) of the 1945 Constitution:

"*Setiap orang berhak untuk bekerja serta mendapat imbalan dan perlakuan yang adil dan layak dalam hubungan kerja*" (Translated: "Everyone has the right to work and to receive fair and proper compensation and treatment in an employment conditions.") UDHR 1948 Article 23 "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

Article 28D (3) of the 1945 Constitution:

“*Setiap warga negara berhak memperoleh kesempatan yang sama dalam pemerintahan*” (Translated: “Every citizen has the right to get equal opportunities in government.”) UDHR 1948 Article 21 “Everyone has the right to take part in the government of his country”.

Article 28D (4) of the 1945 Constitution:

“*Setiap orang berhak atas status kewarganegaraan*” (Translated: “Everyone has the right to citizenship status (nationality).”) UDHR 1948 Article 15 “Everyone has the right to a nationality.” In addition, there is one article of the 1945 Constitution that has similarities with the substance of the 1948 UDHR and the 1976 ICCPR:

Article 28E (1) of the 1945 Constitution:

“*Setiap orang berhak memeluk agama dan beribadat menurut agamanya...*” (Translated: “Everyone has the right to embrace a religion and worship according to his religion ...”)

Article 28E (2) of the 1945 Constitution:

“*Setiap orang berhak atas kebebasan meyakini kepercayaan, menyatakan pikiran dan sikap, sesuai dengan hati nuraninya.*” (Translated: “Everyone has the right to freedom of belief, expressing thoughts and attitudes, according to their conscience.”)

UDHR 1948 Article 18

“Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

ICCPR 1978 Article 18 (1)

“Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching”. Based on the correlations and similarity of the substance of the 1945 Constitution and international law on human rights above, it can be concluded that Indonesia has adopted some of these international provisions into its constitution. However, to date, Indonesia has not firmly determined the classical theory it adheres to. In terms of the association between the substance of human rights in international and national law, Indonesia seems to imply international receptivity while still emphasizing national interests (monism theory). This can be seen from the provisions implicitly adopted into the Indonesian constitution. Nonetheless, certain limitations are regulated by the Law (Article 28J (1)), intending to guarantee recognition and respect for human rights by considering norms and religious values and public order in a democratic society according to Pancasila (the ideology of the Indonesian State). Meanwhile, Indonesian also seems to reflect dualism theory, under the provisions in Article 8 Paragraph (2) of Law No. 24 of 2000 concerning International Treaties, which states that the ratification of international treaties is only be carried out in the presence of a law or a Presidential decree. Then Article 11 paragraph (2) of the 1945 Constitution stipulates that the President, in entering into an international agreement, requires a conversion from an international agreement to forming a law with the House of Representatives’ approval (Riry, 2021).

Although it is difficult to determine the association between national and international in theory, one thing is certain, that national law and international law are inseparably linked since there is an interconnected contribution role between the two legal systems that complement and influence each other. The State of Indonesia, as one of the International Law subjects, participates in upholding the guarantee and protection of Human Rights by including materials regarding the protection of Human Rights in the Indonesian constitution. In addition, the State of Indonesia has also taken part in ratifying various international treaties on human rights into its National Law.

5. Conclusion

Article 1 paragraph (3) of the 1945 Constitution declares that Indonesia is a state based on the law (*Rechtstaat*). Friedrich Julius Stahl stated four elements of *rechtstaat*, namely: a) Protection of Human Rights; b) Separation or distribution of powers to guarantee those rights; c) Government based on regulations, and d) Administrative court in disputes. Therefore, it can be understood that human rights become a part of the constitution (law of a state) and consequently must be protected by the constitution itself. Indonesia has regulated the content of human rights since the second amendment to the 1945 Constitution, which was included in chapter XA of the body of the constitution. According to the results of this research, Indonesia has adopted some of these international provisions into its constitution. It can be seen that almost all contents on human rights in article 28

of the 1945 Constitution of the Republic Indonesia are also contained in the Universal Declaration on Human Rights 1948. In addition, several provisions on the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1976 seem very similar to provided contents on the UDHR 1948. Therefore, it is undebatable that ICCPR and ICESCR also influence the inclusion of human rights contents in the 1945 Constitution on the second amendment in 2000.

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