

# HUMAN RIGHTS IN INDONESIAN CONSTITUTIONAL AMENDMENTS\*

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**Abstrak:** *Hak Asasi Manusia dalam Amandemen Konstitusi Indonesia.* Perubahan konstitusi Indonesia telah memasukkan prinsip-prinsip hak asasi manusia ke dalam Undang-undang Dasar Negara Republik Indonesia (UUD NRI) 1945, terutama pada amandemen kedua tahun 2000. Berdasarkan amandemen tersebut, UUD NRI 1945 saat ini telah mengatur prinsip-prinsip hak asasi manusia sebagaimana juga diatur dalam Deklarasi Universal Hak Asasi Manusia (DUHAM). Namun demikian, masih terdapat beberapa catatan penting, yang intinya adalah kurangnya penekanan visi dan misi Negara dalam mengimplementasikan hak asasi manusia di Indonesia, selain juga masih adanya kesenjangan norma antara UUD NRI dan DUHAM.

**Kata Kunci:** hak asasi manusia, konstitusi, UUD NRI 1945, DUHAM

*Abstract: Human Rights in Indonesian Constitutional Amendments.* Indonesian constitutional amendments incorporated human rights principles into the Constitution of the Republic of Indonesia 1945 (UUD NRI), especially in the second amendment in 2000. Under that amendment, the UUD NRI currently stipulates human rights principles as provided for in the Universal Declaration of Human Rights (UDHR). However, there are some important notes, which at its core is a lack of emphasis on the vision and mission of the State in implementing human rights in Indonesia, as well as the existence of gaps between the norms of the Constitution and the Universal Declaration of Human Rights.

**Keywords:** human rights, the Constitution, the Constitution of Republic of Indonesia, the Universal Declaration of Human Right

## **Introduction**

One conception of the sociology of law states that law is not immune from change and reform as needed and the times. On this basis, the law adjusted to the conditions of a society that becomes the subject, because it is functionally the law concerned to give a sense of justice to every community that lies below.

The Constitution, also known as the UUD NRI, is not immune from change and reform, even in almost all countries, with various factors and causes. But from some of these changes, there is one thing that can be emphasised, that constitutional changes (amendments) are made by a country because of the presence of a transition in the political context which accompany those changes and require a transition in the system of state or government.

One factor that happens quite often, especially in third world and developing countries, is the process of changing the Constitution which is caused by the process of transition to a democratic system. In the meantime, democratic values and human rights that become important elements in the modern state inspire many countries to put those two elements in the Constitution. The implication, the processes and the transitional period from an authoritarian regime in a country is usually followed by constitutional changes to incorporate international human rights standards and democratic values as an effort to prevent the reoccurrence of absolute power.

In the case of Indonesia, constitutional changes still occurred, in fact up to four times, after the government of the authoritarian Suharto regime. These changes also incorporate the principles of human rights as a whole into the Constitution, especially the changes/amendments of 2000. Thanks to that amendment, the Constitution of the Republic of Indonesia now sets out principles of human rights as provided for in international standards (Universal Declaration of Human Rights). This paper seeks to review the constitutional reforms in Indonesia by focusing on the inclusion of human rights principles within it.

## **State Constitution and Objectives**

The State is an association of many people, groups, classes and ideologies, who have diverse interests, but these interests are quite able to be manifested by a group of people who are given the mandate to lead and be responsible for the affairs together. On the basis of the mandate of all individuals in a country, state power is limited in such a way as to not exceed the limits of reasonableness and arbitrary acts of power (abuse of power). This restriction is carried out within a legal frame which then becomes the basis of modern constitutional understanding.<sup>1</sup> From here, it is understandable that the constitution is an extension of the concept of law that limits the authority of the State in carrying out its duties and functions.

There are several views related to the purpose of the Constitution, among which are: a) the various state agencies with authority and how they work; b) the relationship between state institutions; c) relationships with the citizens of the state

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<sup>1</sup> Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid II*, (Jakarta: Mahkamah Konstitusi RI, 2006), p. 11.

institutions (the people), and d) the guarantee of human rights, and e) other matters that are fundamental to the demands of the times.<sup>2</sup> For this purpose, it seems increasingly clear that the Constitution of a country not only limits the authority of the State, as a function of law, furthermore, the Constitution also sets out the limits of authority of state institutions, relationships between state institutions, the relationship between state and citizens, human rights guarantees, as well as other regulations that are demanded by its existence in accordance with the times.

From the existence of multiple objectives and intentions in the constitution, by definition, as stated by legal scholars ECS Wade, quoted by Maria Farida, the Constitution is a document that lays out the framework and functions, and determines the main procedures of such bodies. In the meantime, as already mentioned above, a constitution can be viewed as an institution or set of principles of state institutions, such as executive, judiciary and legislative, which in essence centres around the power relations in a country.<sup>3</sup> The framework and functions of each these institutions become the guide for duty holders in carrying out their duties in running the government and the state.

Further, according to some views, if traced further, the idea of state law is a continuation of thinking about the limitation of power, as one of the principles of democratic constitutionalism. The essence of the idea of state law is a restriction on power, through judicial directives-law. As revealed by Andrew Heywood, quoted by Wahyudi Dja'far, that within a narrow scope constitutionalism can be interpreted within the boundaries of state organization that is limited by the constitution-the essence of the constitutional state. That is, a country can be said to adhere to the concept of constitutionalism if the state institutions and political processes in the country are effectively limited by the constitution. Whereas in a broad sense, constitutionalism is a set of values and manifestations of the political aspirations of the citizens, which is the reflection of the desire to protect freedom, through a mechanism of supervision, both internal and external to the power of government.<sup>4</sup>

Moreover, the frame of the constitutional state which is based on the rule of law necessitates the State Constitution to contain substantive aspects, which basically confirms that the state is a constitutional state, not based on power, among others is a recognition of the principle of law enforcement, separation of powers, the guarantees of human rights, the principle of a fair, independent and impartial trial, guarantees of equality between citizens, as well as a ban on any individual to act arbitrarily towards others.<sup>5</sup> From this understanding, it can be ascertained that the concept of human rights is an important pillar in the constitutional state and its existence along with the other principles in an attempt to carry out asystem and state of good governance.

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<sup>2</sup> Smita Notosusanto, "Menuju Konstitusi Baru", p. 1. Artikel diakses dari [http://www.propatria.or.id/download/Paper%20Diskusi/smita\\_menuju\\_konstitusi\\_baru.pdf](http://www.propatria.or.id/download/Paper%20Diskusi/smita_menuju_konstitusi_baru.pdf)

<sup>3</sup> Maria Farida, *Dasar-dasar Ilmu Politik*, (Jakarta: Gramedia Utama Persada, 2005), p. 96.

<sup>4</sup> Wahyudi Djafar, "Menegaskan Kembali Komitmen Negara Hukum: Sebuah Catatan atas Kecenderungan Defisit Negara Hukum di Indonesia", in *Jurnal Konstitusi*, Volume 7, No. 5, October 2010, p. 151.

<sup>5</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sekjen dan Kepaniteraan MK RI, 2006), p. 55

## The Impetus for the Constitutional Amendment

Apart from historical evidence and facts on the formation of the Indonesian nation, a matter that can no longer be denied law does not exist as steady, standard and timeless, but the whole which is called law prepares itself to receive changes and improvements, in accordance with the conditions of the times. In the method of establishment of Islamic law known by the term "Law Changed In accordance with the Transition of Time and Place (Taghayyur al-hukm bi al-wa taghayyur amkan azminah)" which is certainly known within other legal systems. In this context, the Constitution notes that the main foundation of enforcement and implementation of the state and legal system is not immune from the fingertips of change, because it can be just a norm within it considered obsolete and incompatible with the demands of space and time.

As to some other aspects, human rights have evolved significantly, particularly after World War II and the adoption of the Universal Declaration of Human Rights by the United Nations in 1948. Further, the adoption of human rights law by the UN Member States also began to strengthen, because the principles of human rights mandates for each state to carry out those principles, both in the context of the protection, promotion, and fulfillment.<sup>6</sup>

The idea and concept of the democratic Constitutional State where human rights continue to be promoted and protected and burning in minds and hearts of our founding fathers. Those matters seem obvious in the drafting of the constitutions that came into force in Indonesia, namely the 1949 Constitution and the Constitution of the Republic of Indonesian States of 1950. In those constitutions Articles that were contained in the UN Universal Declaration of Human Rights in 1948 were included. That shows the development of our founding fathers thoughts which assert, that the provisions on the respect, promotion and protection of human rights are needed and are critical for such to be inserted into the state's constitution.<sup>7</sup> Further, it is not necessary to go too far to take an example on the influence of international human rights law on domestic law, namely in the case of post-independence Indonesia.

As we know, that Indonesia has experienced several changes to the Constitution, which in its time was greatly influenced by the political context and involvement of its leaders. Moreover, historically, it's hard to argue that the idea of a democratic constitutional state where human rights that are promoted and respected continue to be fought by the pioneers of Indonesian independence. When the founders of the nation convened the Indonesian Independence Preparations Investigative Assembly (BPUPKI) from 28 May to 1 June 1945 and 10-17 July 1945 the ideas and concepts of an Indonesian Constitution were discussed by its members. During these sessions, the term '*rechtsstaat*' (State Law) was put forward by Mr. Mochammad Yamin, a member of the BPUPKI, although in general the founding

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<sup>6</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sekjen dan Kepaniteraan MK RI, 2006), p. 55.

<sup>7</sup> Abdul Hakim Garuda Nusantara, "Negara Hukum Dan Hak Asasi Manusia", presented at The training of Human Rights for Teachers of Law and Human Rights". Makassar, 3 - 6 Agustus 2010, (Pusham UII dan Norwegian Center for Human Rights), p. 2

fathers wished for a united, independent, sovereign, democratic, and constitutional Indonesian republic for justice and welfare for all Indonesians.<sup>8</sup> In fact, the 1945 Constitution (before amendment) as the first constitution of Indonesia was a brief constitution that consisted of 37 Articles, four transitional provisions and two supplemental provisions. However, according to Abdul Hakim Garuda Nusantara, that was by no means a reason to negate the idea and concept of a State law and human rights contained in it, because like that said by Sukarno, a concise Constitution can be refined at a later date.<sup>9</sup>

Somewhat different from the first Constitution, the Constitution of the Republic of Indonesia and the Republic of Indonesian States of 1950 included all of the components of human rights in it. Not half-hearted, according to some opinions, the Constitution put all the elements of human rights as stipulated in the Universal Declaration of Human Rights established by the UN in 1948,<sup>10</sup> despite Indonesia's then political situation demanding that Indonesia re-embrace the Constitution of 1945. From these facts, it is difficult to deny a claim that state constitutional change is a necessity so that the objectives and substantial intentions of all members of society can be fulfilled.

Practically, there are several factors that led to constitutional changes, among them the government's political transition from authoritarian to democratic government. To institutionalise these changes, one of the main options is to put these changes in the new Constitution that reflects the historical context, values and democratic ideals that want to be realized in the new democratic state. In this context, the new Constitution is seen as a new social contract that forms the basis for the constitutional system, [offering] the protection of fundamental rights of citizens and the country's economic policy. The new constitution also becomes an essential requirement, especially during the transition period in order to reinforce the consolidation of democracy because usually in transition periods, authoritarian elements still remain and have a chance to dominate political life once more.<sup>11</sup>

Historically, the formulation of new constitutions occurred in Eastern European countries in transition from communist government to the liberal democratic government. The same thing happened in South Africa that went through a drastic transition from the Apartheid system which covers all aspects of life [bagian kalimat ini yang disoroti kurang jelas] into a system of racial justice. Similar situations happened in our neighboring countries in the Philippines after the fall of the Marcos regime and in Thailand after the end of the military after the Black May incident of 1992.<sup>12</sup> In fact, even though the United Kingdom doesn't have a constitution, that

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<sup>8</sup> Abdul Hakim Garuda Nusantara, "Negara Hukum Dan Hak Asasi Manusia", p. 1-2

<sup>9</sup> Abdul Hakim Garuda Nusantara, "Negara Hukum dan Hak Asasi Manusia", p. 2; See "The debate about human rights provisions in the Constitution of Indonesia shortly after independence", Tim Penulis Pusham UII, *Hukum Hak Asasi Manusia*, p. 279.

<sup>10</sup> Maria Farida, *Dasar-dasar Ilmu Politik*, h. 128; Regarding the history and information about amendments to the Constitution of Indonesia, see Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, h. 31.

<sup>11</sup> Smita Notosusanto, *Menuju Konstitusi Baru*, p. 1.

<sup>12</sup> Smita Notosusanto, *Menuju Konstitusi Baru*, p. 1.

system is based on constitutional conventions and principles that, in the past, were used to avoid excesses of authoritarian and repressive systems and to separate church and state. Similarly, the history of Islam in society, the emergence of the Constitution of Medina (better known as the Charter of Medina) was formed as an attempt to establish a new order of society and releasing the elements of authoritarianism in the Arab society at that time, who prefer the power and authority.

In addition, in human life, every period of time and place provide for conditions of life that shape and influence frames of reference and fields of experience with loads of different interests, so that the process of understanding constitutional provisions can be developed in practice in the future.<sup>13</sup> Returning to the statement quoted by Sukarno Abdul Hakim Nusantara above, that the Constitution of Indonesia in 1945 was not a final product that was standard and timeless, but is open to changes according to the interests of the whole nation of Indonesia, and are on an accountable legal framework.

In the case of the collapse of the Suharto regime in Indonesia that too provided for an experience of reformation of Indonesia's Constitution. The economic crisis and the crisis of legitimacy of the law caused the political crisis that eventually resulted in the collapse of New Order's system of power. Since May 1998, the Indonesia nation entered into an era of national reformation in which democratic rights and the rights of civil and political freedoms were restored as a basis to straighten the way to a democratic constitutional state, where human rights are promoted and protected. In this regard, there are a few notes on some of the developments in the context of the constitutional state and human rights, as argued by Abdul Hakim Garuda Nusantara, among which was the reform of political infrastructure through the restoration of rights to basic freedoms, the right to freedom of expression, freedom of association and right to participate in the political process and governance, improvement of the political system, and several other aspects.<sup>14</sup>

In response to the collapse of authoritarian regimes, constitutional reform in Indonesia has been carried out from 1999 to 2002 through the First to the Fourth Amendment, although up until now the 1945 amendment is still very weak, both in substance and process, in the absence of a clear paradigm. The discussion was only partially concerned with short-term political interests at the time of the discussion, and still seem patchy, among them one of the causes was the lack of community participation in the process of change. Returning to the concept that the Constitution is a social contract between society and the state and society is bound to the social contract, the consequence [to society] is something that the public should be involved during the process of composition.<sup>15</sup> In spite of these shortcomings, changes in the Constitution of Indonesia are the nation's efforts to improve itself from the previous systems for the better, as well as to avoid a reoccurrence of the catastrophe that happened in this country that made a law as a instrument for authoritarian action outside of the rule of law.

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<sup>13</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, p. 30.

<sup>14</sup> Abdul Hakim Garuda Nusantara, "Negara Hukum & Hak Asasi Manusia", p. 5-6.

<sup>15</sup> Smita Notosusanto, *Menuju Konstitusi Baru*, p. 1.

## Human Rights aspects in Constitutional Amendments

Normatively, the 1945 changes brought about a change in the structure of its contents. Before the 1945 Constitution was amended it consisted of 16 chapters, 37 articles, 49 clauses, 4 articles of Transitional Rules and two clauses of [supplementary] rules and after the Constitution was amended it contained 21 chapters, 37 articles, 170 clauses, 3 articles of Transitional Rules, and 2 articles of supplementary rules. Of these changes, there were some new ones, among others, regarding the president and vice president who are elected directly by the people of Indonesia, new institutions such as the Regional Representative Council, the Constitutional Court, and so on, as well as improvement in the political arrangements and human rights.<sup>16</sup>

As is known that one aspect of Indonesian constitutional reform is publication of provisions on the protection of human rights as a whole, although according to some opinions the human rights provisions in the Constitution of the Republic of Indonesian States of 1950 is more comprehensive compared to the [current] Constitution amendment. Aspects of human rights in the Constitution of Indonesia entered in full for the second time [in 2000 on the enactment of] the second amendment to the 1945 Constitution. In the Majelis Permusyawaratan Rakyat (MPR or People's Consultative Assembly) Annual Session in 2000, the struggle to include the protection of human rights into the Constitution had finally been achieved. The People's Consultative Assembly agreed to include human rights in Chapter XA, which contains 10 Articles on Human Rights (sections 28A-28J) in the Second Amendment of the Constitution of 1945 enacted on August 18, 2000.<sup>17</sup> Within this amendment, the MPR included almost the entire range of human rights, as stipulated in international law, both civil and political rights, or on aspects of economic, social and cultural rights.

Not only that, the second amendment to the 1945 Constitution also included a clause stating that the State—in this case, the Government—Is responsible for the protection, fulfillment and promotion of human rights in Indonesia. The Constitution also stipulates that the implementation of human rights in accordance with the principles of a democratic constitutional state, and extended the arrangements within subordinate legislation.<sup>18</sup> In Article 28I, paragraph (4) of the Constitution's second amendment explicitly states that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.

The Second Amendment of the Constitution of the Republic of Indonesia, especially the chapter on Human Rights was a brilliant achievement reached by the People's Consultative Assembly after the New Order. The Second Amendment brought an end to the long journey of this nation in the fight for constitutional protection of human rights within the Constitution. Starting from the initial drafting of the Constitution in 1945, then the Constituent Assembly (1957-1959), through the

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<sup>16</sup> AM Fatwa, *Potret Konstitusi Pasca Amandemen UUD 1945*, (Jakarta: Kompas, 2009), p. 7.

<sup>17</sup> Tim Penulis Pusham UII, *Hukum Hak Asasi Manusia*, p. 283.

<sup>18</sup> Pasal 28I ayat (5) UUD RI.

early New Order (1968) and ending at the current reform is a long discourse on human rights in Indonesia's political-legal history, as well as being proof that it would be wrong to say that human rights are not recognized as part of Indonesian culture.<sup>19</sup>

Chapter XA of the Constitution on Human Rights contains 10 Articles, ranging from 28A to 28J. In each Section, several human rights instruments are contained in each clause, so it is not possible to just simplify that the Constitution has only 10 articles in total. In Article 28A, RI Constitution regulates that the right to life must be protected. This Article explicitly states, "Everyone has the right to live and to defend life and their livelihood", which is in line with Article 3 of the Universal Declaration of Human Rights (UDHR).<sup>20</sup>

Article 28B of the Constitution underscores the importance of the right to descendants through family and marriage, as well as regulating for the rights of children. Article 28B asserts:

- (1) Everyone has the right to form a family and continue the descent through legal marriage;
- (2) Every child has the right to survival, grow, and develop and are entitled to protection from violence and discrimination.

In the UDHR, the right to a family under Article 16, which states that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They have equal rights in the matter of marriage, during marriage and at divorce".<sup>21</sup> Paragraph (2) of this article makes it more explicit that marriage is based on free choice and full agreement by both families.

Article 28C of The Constitution sets out the rights to self-development, education, and benefit from science, in addition to the recognition of the struggle for the rights of every person in groups to build community, nation and country. Section 28C asserts:

- (1) Every person has the right to develop themselves through the fulfillment of basic needs, and is entitled to education and to benefit from science and technology, arts and culture, in order to improve the quality of life and for the welfare of mankind;
- (2) Every person has the right to advance himself in fighting for her rights collectively for building a society, nation and country.

These provisions in Article 28C of the Constitution are arranged separately in the UDHR. Associated with the right to education, as set out in Article 26 of the UDHR, in fact there is an emphasis that education should be free of charge. In addition, Article 26 paragraph (1) of the UDHR affirms all levels of education, ranging from the lowest to college. Associated with the right to benefit from science, as set out in the UDHR, Article 27 paragraph (1), namely, "[Every person has the right to

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<sup>19</sup> Tim Penulis Pusham UII, *Hukum Hak Asasi Manusia*, p. 284.

<sup>20</sup> Dalam pasal 3 DUHAM disebutkan bahwa: "Everyone has the right to life, liberty and security of person."

<sup>21</sup> Pasal 16 ayat (1) DUHAM.



participate in the cultural life of the community with free, to enjoy the arts, and to share in scientific advancement and benefits][Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits]"<sup>22</sup>

Article 28D paragraph (1) [of the Constitution] sets out the rights to legal certainty that is just and right to equal treatment before the law. Somewhat different from the substance referred to in paragraph (1), Paragraph (2) of this section regulates the right to work and get rewards from their work. Paragraph (3) regulates the right of everyone to get involved in government, as well as the last paragraph (4) which recognizes the right of everyone to obtain citizenship status. This Article explicitly states:

- (1) Every person has the right to recognition, security, protection and legal certainty of fair and equal treatment before the law;
- (2) Every person has the right to work and receive benefits and fair treatment and decent working relationship;
- (3) Every citizen is entitled to equal opportunities in government;
- (4) Every person has the right to citizenship status.

If you notice, the above article sets out the four components as well at the same time differ [with the UDHR], namely the right to a fair and equal laws, the right to work, the right to engage in governance, and the right to obtain citizenship. In comparison with the UDHR, the provisions of those rights provided for in the articles are different. The right to recognition before the law provided for in Article 6 of the UDHR, the right to work on Article 23 of the UDHR, the right to participate in the government provided for in Article 21 paragraph (1) and the rights of citizenship status set out in Article 15 of the UDHR.

Furthermore, Article 28E of the Constitution also includes various components of rights simultaneously. Even under subsection (1) of this Article, there are no fewer than four components of the rights, including rights to religion and worship according to his religion, the right to choose one's education, the right to choose employment, the right to choose citizenship, the right to choose their residence and the right to leave or return to his country. Paragraph (2) of this article reaffirms the right to freedom of belief and faith, including too the expression of thoughts and attitudes in accordance with their conscience. The last paragraph sets out the rights of association, assembly and expression. All the components of the rights are arranged separately in the UDHR, as described above

Clearly, sSection 28E of the Constitution states:

- (1) Every person has the right to religion and worship according to his religion, to choose education and teaching, choice of employment, to choose citizenship, choosing where to live in the country and to leave the country as well as the right to return;

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<sup>22</sup> Article 27(1) of the UDHR.

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- (2) Every person has the right to freedom of belief in faith, express thoughts and attitudes, according to his conscience.
- (3) Every person has the right to freedom of association, assembly and expression.

Section 28F of the Constitution specifically regulates the right to communication and information. It is mentioned in this Article, that, "Everyone has the right to communicate and obtain information to develop personal and social environment, and the right to seek, obtain, possess, store, process and convey information by using all available channels". Provisions on freedom of information are also set in the UDHR, but in the context of freedom of opinion and to express an opinion without any restrictions, including received information and opinions from others as well.

Section 28G of the Constitution relates to the protection of the individual, family, honor, dignity, and property, as well as the right to security and protection from the threat of fear to do something that is a basic right. In order to vary the substance, paragraph (2) of this Article, affirms the right of everyone to be free from torture or degrading treatment of humanity. This paragraph also stipulates that any person obtain political asylum from another country.

- (1) Any person entitled to the protection of the individual, family, honor, dignity, and property under his control, and is entitled to security and protection from the threat of fear to do or not do something that is human rights;
- (2) Every person has the right to freedom from torture or degrading treatment of human dignity and are entitled to political asylum from another country.

Article 28H of the Constitution insists on right to achieve physical and spiritual well being, to be housed and to obtain a healthy environment, including the health service. In addition, also set out are rights to get the opportunities and benefits to achieve equality and justice. Paragraph (3) affirms the right to social security of the State, as well as the last paragraph of this article asserts the freedom of every person to [the quiet enjoyment of] private property and may not be taken arbitrarily by anyone.

More generally, the Article 28 of the Constitution provides for more human rights components, by asserting:

- (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be prosecuted on the basis of a retroactive law are human rights that can not be derogated from under any circumstances;
- (2) Every person is free from discriminatory treatment on any grounds and is entitled to protection against the discriminatory treatment;
- (3) Cultural identity and rights of traditional communities be respected in accordance with the times and civilizations.

Continuation of this article-namely paragraph (3) and (4)-emphasizes the state's obligation to human rights, as mentioned above, the following:

- (4) The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government;
- (5) To uphold and protect human rights in accordance with the principles of a democratic constitutional state, the implementation of human rights guaranteed, regulated, and set out in legislation.<sup>23</sup>

Finally, when compared with the UDHR, the provisions of last Article in the chapter on Human Rights in the Constitution is slightly different conceptually. The difference is that in obligation of every person to respect human rights of others in the society, nation and state, as well as the ability to restrict freedom through legislation, as well as considerations of morality, religious values, security, public order in a country democratic. Although the terms are quite common, but the concept of human rights, not known to individual liability, as well as limitations imposed by an Act is possible only in times of emergency.

Of some of the human rights provisions above, it does not mean there is no shortage of criticism and, conversely, there are still important notes to be considered in the effectiveness of the efforts of human rights in Indonesia. First, the second amendment of the Constitution did not expressly mention the vision and mission of the state on human rights, so it needs to be formulated in the function and role of the state to ensure and guarantee human rights to be carried out consistently by the authority.

Second, the amendment does not mention explicitly that the values and principles of human rights in the Constitution should be the basis of reconciliation for the construction of various other laws under the Constitution, but also does not contain and manage the instruments and institutions capable of guaranteeing and having basic tasks so that the values and principles of human rights can be actualized more concretely. Third, the amendment is not entirely consistent to reconcile with the principle of universality of human rights, because some chapters still contain values that have a particular indication, for example in Article 28J there is a paragraph that enables restrictions on the rights of non-degradable rights (rights that can not be restricted).

Fourth, the amendment also does not address concrete problems concerning how a state protects, promotes, upholds human rights in transition, because it is ascertainable that the state might not be able to ensure the full implementation of human rights in the context of economic, cultural, and social development in country's without that ability.<sup>24</sup>

### **Closing Remark**

From the above, there are several conclusions that can be drawn by this paper, among which are: First, that a change in law, including the Constitution, is a necessity

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<sup>23</sup> Pasal 28I UUD RI.

<sup>24</sup> Smita Notosusanto, *Menuju Konstitusi Baru*, p. 7.

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in any country, because of the development of more advanced societies and the changing demands of adjustment between the condition of society and the law itself. Secondly, that in addition to the transition process of a democratic state, constitutional change has also been identified by the change in outlook on life of a society that encourages the establishment of the State with the new norms to be set out in the Constitution. Further, Constitutional amendments also necessitates a change in social order which is anticipated by the existence of the change.

Third, in the context of Indonesia, changes in the Constitution can not be separated from the transition process from the post-Soeharto's authoritarian rule, with the expectation that the authoritarian regime and the absolute power that occurred during the New Order will not happen again in the future. For this reason, the Constitution includes principles on the rule of law strictly within the framework of democracy, as well as the guarantee of human rights.

Fourth, although there are Constitutional amendments that have inserted human rights measures clearly within the Constitution, there are still a number of important notes to these set of problems, which essentially are the lack of emphasising the State's vision and mission in the implementation of human rights in Indonesia, besides the existence of asymmetry of norms between the Constitution and the UDHR, like the limitation on rights that truly cannot be limited. []

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