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The Development of Concept of the Right to Self-Protection and Interpretation of Human Rights Restriction in the 1945 Constitution of the Republic of Indonesia after Amendment

Muhammad Taufiq[1], Faisal A Rani[2], Zahratul Idami[3]
[1] *(UniversitasSyiah Kuala, Indonesia)*
[2] *(UniversitasSyiah Kuala, Indonesia)*
[3] *(UniversitasSyiah Kuala, Indonesia)*

ABSTRACT: The ideology that conceptualizes human rights as individual human rights is often called by critics as the ideology of liberalism that is too defending the interests of individual human beings in economic, social and political life. The nationalist pioneers of independence on colonial lands, and then also the leaders and the government authorities in developing countries generally also tend to imply that such individual interests will easily be skewed to - or even identical to - egocentrism and which is therefore feared that it will easily spark anti-social attitudes. Regardless of such prejudice, the government authorities in developing countries, ex-colonial state, relentlessly always try to urge on the meaning of human rights according to its more appropriate version for the interests of developing countries. The point is that human rights must prioritize the interests of humans as kolektiva or suprakolektiva (nation) rather than human interests as individuals, paying attention to one of the material content in the constitution in the form of the existence of guarantees on "human rights and citizens", then the Indonesian nation as a rule of law state must uphold the constitution by protecting the human rights and its citizens of every action and violation of Human Rights (HAM). Constitutionally, the concept of human rights has been contained in the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia initially only contained six articles regulating about human rights and then it experienced a very significant change in the second amendment of 1945 Constitution of the Republic of Indonesia. The reference point of the problem of this research is how the process of development or change of the concept of the right to self protection after the amendment and interpretation of the establishment of human rights restrictions in the 1945 Constitution of the Republic of Indonesia, as well as to see how a grand design of human rights that was tried to be built by Founding Fathers in this country in accordance with Indonesian state philosophy of Pancasila, the atmosphere offered at that time was also taken into consideration looking at the concept of human rights at the present time. Well, looking at this side, the possibility of a different concept of human rights regulated in Indonesian constitution with the concept of universal human rights or the Universal Declaration of Human Rights, and also different from the concept of human rights based on Individualism and liberalism.

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I. INTRODUCTION

The State of Indonesia as a modern rule of law state that is independent and sovereign, which has a constitution or Basic Law (UUD). The government is given the right to regulate and to manage the community to be orderly and peaceful by drafting a constitution.[1] In drafting a constitution, according to Mr. J.G Steenbeek, in general, it contains three main points, including:[2] First, there are guarantees for human rights and their citizens; Second, constitutional structure of a state which is fundamental is stipulated, and Third, there are the division and limitation of constitutional tasks which are also fundamental. In understanding the rule of law state, guarantee of the protection of human rights is considered an absolute characteristic that must exist in every country that can be called a rechtstaat.[3]

In regard to one of the material content in the constitution in the form of the existence of guarantees for "human rights and citizens", then the nation of Indonesia as the rule of law state must uphold the constitution by protecting human rights and its citizens from every act and violation of Human Rights (HAM). Constitutionally,

[1] Sri Soemantri M, *Asas Negara Hukum dan PerwujudannyaDalamSistem Hukum Nasional*, Dalam M. BusyroMuqaddas, dkk.,(ed.), *Politik Pembangunan Hukum Nasional*, UII-Press, Yogyakarta, 1992, hal. 25-26.
[2]Dikutipdalam Sri Soemantri M, *Prosedur dan SistemPerubahanKonstitusi*, Disertasi, Bandung, 1987, hal. 51 dalamDahlanThaib, dkk, *Teori dan Hukum Konstitusi*, RajaGrafindoPersada, Jakarta, 2006, hal. 16.
[3]JimlyAsshiddiqie, *Pengantar Hukum Tata Negara*, RajaGrafindoPersada, Jakarta, 2009, hal. 343.

the concept of human rights has been contained in the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia initially only contained six articles regulating human rights, and then it experienced a very significant change in the second amendment of 1945 Constitution of the Republic of Indonesia[4].

The fall of the New Order regime, which was very repressive after being in power for 32 years, has raised a great awareness of the importance of respecting human rights. In political aspect, there is an urge to change the political system towards a more democratic political system, whereas in the legal aspect the agenda of reforming the legal system was urged, or at least law enforcement towards upholding the supremacy of law, and on human rights there is pressure appear to enforce the respect, fulfillment and enforcement, as well as protection of human rights.

One part of the agenda that express is the urge to immediately implement a policy of protection, respect and fulfillment of human rights both concrete in nature and constitutional basis changes in 1945 Constitution of the Republic of Indonesia that were seen as the main cause of violations of human rights by the power, which in other words, because of the weakness of politics of the law of protecting the respect and fulfillment of human rights in the 1945 Constitution of the Republic of Indonesia is an empty space used by the power to practice human rights violations [5]. However, if it is measured by politic of the law of constitutional human rights in the previous era, the 1945 Constitution of the Republic of Indonesia was very weak, during the RIS (United Republic of Indonesia), recognition and respect for human rights experienced the progress normatively after being included in 35 articles in the constitution RIS (KRIS) 1949 [6], as well as UUDS-RI 1950 but since returning to the 1945 Constitution (UUD 1945) on July 5, 1959 until the collapse of the New Order regime, respect, fulfillment and protection of human rights actually experienced the regression [7]. And finally, after the fall of the New Order regime the regulation on human rights became more detailed and dense in the second amendment of the 1945 Constitution in 2000. In the second amendment of the Constitution of 1945, the regulation on human rights was separated into one special chapter containing 10 articles on human rights (Articles 28A-28J)[8].

The ideology that conceptualizes human rights as individual human rights is often called by critics as the ideology of liberalism that is too defending the interests of individual human beings in economic, social and political life. The nationalist pioneers of independence on colonial lands, and then also the leaders and the government authorities in developing countries, generally also tend to imply that such individual interests will easily be skewed to - or even identical to - egocentrism and which is therefore feared that it will easily spark anti-social attitudes. Regardless of such prejudice, the government authorities in developing countries, ex-colonial state, relentlessly always try to urge on the meaning of human rights according to its more appropriate version for the interests of developing countries. The point is that human rights must prioritize the interests of humans as *kolektiva* or *suprakolektiva* (nation) rather than human interests as individuals[9].

However, the misunderstanding of the interpretation of human rights in legal institutions in this case the Constitutional Court with its decision related to the lawsuit on adultery, as if to provide space for the secularism to be able to enter the state ideology through the policy of the Constitutional Court, this can be seen in the decision No.46/ PUU-XIV/2016, which in that decision it gives the implication for changes to the human rights and state ideology of Indonesia related to the understanding of adultery and Lesbian, Gay, Bisexual, Transgender (LGBT), in this case then it becomes a major influence for the constitutionality of human rights, the shifting of norms to that connection seems to have changed the State Constitution. We need to see that as stated by Mr. J.G Steenbeek, in general the state constitution must contain three main points, one of which is the existence of guarantees for the human rights and their citizens, this then becomes a point of concern that the changes of the concept of human rights will have an impact on changes in the state constitution.

The amendment then gave a misunderstanding of its own flavor towards the concept of human rights that was initially built by the drafters of the 1945 Constitution of the Republic of Indonesia, namely the meeting committee members BPUPKI (Investigating Committee for Preparatory Work for Indonesian Independence) with the characteristics of the Indonesian people according to the philosophy of Pancasila, then became interpretation of the Universal Declaration of Human Rights after the amendment of the 1945 Constitution of the republic of Indonesia. This will then influence the pattern of life of the nation in Indonesia and will even influence little by little the way of Indonesian cultured which due to its human rights begins to be regulated in detail by the state, and this then will have implications at the level of society. What we know is that the Founding fathers when forming the concept of human rights contained in the 1945 Constitution will all refer to the Pancasila, so the interpretation of human rights in several articles must automatically refer to the Pancasila.

[4]Konsep HAM mulaitercermindalamPembukaan UUD 1945 (Alinea ke Satu) dan di DalamBatangTubuhdenganPasal-pasalnya.
[5]SuparmanMarzuki, *TragediPlotik Hukum dan HAM*, PUSHAM UII, Yogyakarta, 2011, hal. 2.
[6]Berjumlah 197 pasal yang diaturdalam KRIS 1949, terdapatsekitar 18 persenpasal yang mengaturtentang HAM.
[7]SuparmanMarzuki, *Loc. Cit.*, hal.2
[8]Majda El-Muhtad, M.Hum, *HakAsasiManusiadalamKonstitusi Indonesia*, Kencana, Jakarta 2007, hal 94.
[9] Satya Arianto, *HakAsasiManusiadalamTransisiPolitik DI Indonesia*, Pusat StudiFakultas Hukum UI, Jakarta, 2005, hal 7.

The cessation of Suharto as President of the Republic of Indonesia on May 21, 1998 marked the formal cessation of the New Order regime, as well as the opening of hopes for democratic legal and political life in Indonesia. During this reform period, the debates re-emerged regarding the constitutionality of the protection of human rights, the debate that arose was no longer about the conceptual issues of human rights, but about the legal basis whether it was stipulated through TAP MPR or included in the Constitution (UUD). Due to the strong demands of the groups of reformation at that time, the debate led to the birth of MPR Decree No.XVII/MPR/1998 on Human Rights. In that TAP contains a mandate to the president and high state institutions to advance human rights protection and to ratify international human rights instruments. In addition, in a relatively short period of time, the President submitted a bill which was then passed on September 23, 1999, namely the Law Number 39 of 1999 regarding Human Rights as a derivative of MPR Decree No.XVII/MPR/1998.

One year later, in 2000, the 1945 Constitution of the republic of Indonesia underwent a second change and included a human rights arrangement which was later separated into one chapter. With the human rights articles after the second amendment of the 1945 Constitution, it shows that:

I. The articles are spread, not only in Chapter XIA about Human Rights.A number of articles on human rights are also found outside Chapter XIA (there are 8 substance of rights);
II. The Constitution of 1945 (UUD 1945) after the amendment has adopted far more and more complete than before, both concerning civiland political rights as well as economic, social and cultural rights;
III. There are so many substantive similarities found in a number of articles on human rights, both inside and outside Chapter XIA, so that conceptually overlap, repetitive and its arrangement is not streamlined.For example, the right to self-protection in article 28G with the rights regulated in three articles, namely Article 28D paragraph (1), and Article 28I paragraph (1) of the 1945 Constitution.

Although with a number of weakness in conceptual, the normative arrangement of such human rights articles are quite advanced, moreover it explicitly regulate the state's responsibility in respecting, protecting and fulfilling human rights, but the conception of human rights responsibilities in the 1945 Constitution is more prominent than the obligations of citizens in respecting the rights of others, this then becomes a serious debate when the development of the concept of human rights is only seen in text, opening the chance to the secularism of state ideology.

Therefore, through this research the author intends to conduct a research, to see how the concept of human rights actually against the right to self-protection contained in the 1945 Constitution and examines that actually the human rights that were tried to be offered by the 1945 Constitution of the Republic of Indonesia (UUDRI *tahun* 1945) have limitations that referred to the ideology of the Indonesian state's constitution.

The advancement of the system of human civilization created a system of power that is full of human rights problems, a strong party not only means physical power, but also means power that is coercive. Then it arises the oppression of employers over slaves, between those who are considered violating the rules with law enforcer, between the king over the people and so on.[10] Such oppression and coercion develop and live for decades and hundreds of years or even thousands of years, as without any power that is capable to fight or to prevent and to stop it.

Historically, the birth of concepts about the recognition and protection of human rights was directed to restrictions and laying down obligations on society and government. This is as explained by A.J. Milne in his writing "*The Idea of Human Rights*" as follows "*A regime which protects human rights is good, one which fails to protect them or worse still does not acknowledge their existence is bad"*.[11]

Human rights as basic rights that is inherent in theirselves the character of universal and eternal, so that they must be protected, respected, defended and must not be ignored, reduced or deprived of by anyone except by laws or court decisions.[12] Back to the explanation of the definition of "rights" in which there has been a long debate about itself both among legal and political philosophers. Many terms are given for example in English "natural" or "fundamental" which later in Indonesian is referred to as "human rights", "nature/*kodrat*" and basic ". However, the definition of rights is not defined concretely but the essence contained in the rights, namely the existence of a claim *(tuntutan)*, so that talking about rights, then it will be imagined that there is a "claim" or demand.[13]

The definition of human rights as explained above can be an understanding in the next section as is the formulation of human rights in Teaching Human Rights, United Nations, namely "Human rights could be

[10] Kunarto, *HAM dan Polri*, Jakarta : Cipta Manunggal, 1997, hal. 11.
[11] A.J. Milne, *The Idea of Human Rights*, dimuatdalam F.E. Dewrick, ed., *Human Rights : problem, perspectives and texs*, Saxon House, University of Durkham, 1979, hal. 23. Dalam Iskandar A. Gani, *RefleksiPenegakan Hukum dan HAM di Aceh*, 2009,hal. 41.
[12]Hasballah M. Saad, *Sambutan Menteri Negara dan HAM TentangBuku Panduan HAM bagi TNI dan Polri*, Edisi Perdana Proyek P4S2PH, Jakarta 2000, hal. 2. Dalam Iskandar A. Gani, *Ibid.*
[13]Philipus M Hadjon, *Op-Cit*,hal. 38.

generally defined as those rights which are inherent in our nature and without which we cannot live as human being". The formulated definition is very broad in its meaning, in general human rights are formulated as rights that is inherent in humans, which if it's not existed, we will not live as humans, but the formulation still does not cover the meaning and definition of human rights (HAM) in more detail, considering that there are still other basic rights that have not been included in that formulation.

From the formulation above, it can be explained the meaning of human rights as a meaningful concept as a common standard of achievement for all people and all nations, or as a standard that must be achieved and followed by all people and all nations in the world, which in its implementation, the existence of a balance between rights and obligations as well as between individual interests and public interests and even the interests between countries must always be considered.

Human rights are rights granted directly by God Almighty in the form of natural rights, because humans are the most perfect creatures on this earth. Therefore, there is no power in the world that can revoke it. Nonetheless, it does not mean human beings with rights that can act arbitrarily because if they rape other people's human rights, they must be responsible for the actions. On the other hand, the history of human rights is older than the reasons given to be believed until now. The discussion of humanitarian principles in the context of enforcement, protection and advancement of human rights, in the form of state actions in level of national, international and in Islamic contexts, it will be discussed separately in the following explanation.

In connection with the above description, the history of human rights has lasted a long time throughout the history of human existence. But in general, the experts in Europe still has different opinion about the birth of human rights, most of them still argue that the birth of human rights began with the birth of *Magna Charta* in 1215 in England. Magna Charta proclaimed that the king who had absolute power, the king who became restricted in his power and began to be held accountable before the law. From this, the doctrine "the king is not immune to law anymore and began to be responsible to the law" was created. While experts consider that it is wrong if the Magna Charta is considered as the forerunner to the birth of human rights, because this charter is really just a compromise of the division of power between King John and the nobles, and it is just recently the words in this charter gained a broader meaning as it is today.[14]

Since then it began to be practiced if the king violated the law then he must be tried and must account for his policies to parliament. So it had begun to be stated that the king is bound to the law and is responsible to the people, even though the power to make laws at that time was more in his hands. Thus the king's power began to be limited as the embryo of the birth of a constitutional monarchy which has the core that is the king's power as a mere symbol. The birth of *Magna Charta* was then followed by more concrete developments, with the birth of *Bill of Rights* in England in 1689.

Based on the background of the problems that have been stated above, the problem formulation is as follows:

1. How the legal implications of the change in the concept of Human Rights on the right to self protection that occurred in Indonesia after the amendment to the Constitution of 1945?
2. How is the interpretation of the Restriction of Human Rights in the 1945 Constitution viewed from the Pancasila ideology?

II. METHODS

This research is a descriptive study and if it is seen from its purpose, this study is included in normative legal research.Normative legal research is a scientific study to find the truth based on the logic of legal science from the normative side.[15]Literature study is carried out with the purpose of obtaining secondary data through a series of activities such as reading, quoting, and analyzing legislation relating to the object of research.

In relation to normative research, several approaches will be carried out here, namely:[16]

a. Legislative Approach (normative juridical)
   An approach taken towards various legal rules related to the formulation of the problem. In this research, the reference to the approach is the 1945 Constitution of the Republic of Indonesia.
b. Historical approach
   The historical approach is carried out by analyzing the background of what is learned and the development of arrangements regarding the issues. This study is used to reveal the purpose of regulating the system and principles of human rights restriction in Indonesia. In other words, this research was conducted by re-reading literature about history which contains a discussion of history since the constitutional reformation from 1999 to 2004.

[14] Scott Davidson, hal. 2 dalam Iskandar A. Gani, *Op., Cit.*, hal. 43.
[15]Johnny Ibrahim,*Teori, Metode dan Penelitian Hukum Normatif*, BayumediaPublising, Malang, 2007, hal.47
[16]*Ibid*, hal. 300

III. RESULT

A. The legal implications of the change in the concept of Human Rights towards the Right to Self-Protection that occurred in Indonesia after the amendment to the 1945 Constitution.

Article 28H paragraph (1) of the 1945 Constitution:
"Everyone has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment and the right to health services."

Article 28J paragraphs (1) and (2) of the 1945 Constitution:
(1) "Everyone must respect the human rights of others in the orderly life of society, nation and state".
(2) "In implementing their rights and freedoms, every person is obliged to submit to the limitations established by law with the sole purpose of ensuring the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society."

Based on the constitutional law above, everything is built on the philosophy of the Republic of Indonesia, the philosophical basis is the Almighty God as stipulated in the First Principles of Pancasila, Opening of the 1945 Constitution and Article 29 paragraph (1) of the 1945 Constitution which guarantees the state to uphold values The Almighty Godhead, and the founding fathers of Indonesia have agreed to include the principle of Godhead as the First Principle of Pancasila as the basic norm of the Republic of Indonesia. In the 1976 Pancasila Description book, Members of the Five Committee, namely Mohammad Hatta, Prof. HA SubardjoDjoyoadisuryo S.H., Mr. Alex AndriesMaramis, Prof. Sunario S.H., and Prof. AbdoelGafarPringgodigdo S.H., formulates:
"The Godhead is the basis that guides the ideals of our nation, which gives soul to the effort to carry out all truth, justice, and goodness, while the foundation of humanity that is just and civilized is a continuation in the actions and practices of life from the basis that led earlier".[17]

That the founders of the Indonesian nation did not aspire to Indonesia as a "religious neutral" or "secular state" and individualistic right to self-protection. Pancasila and the Preamble of the 1945 Constitution are loaded with religious values as the basis for the establishment of the State of Indonesia. Therefore, the understanding of Pancasila and the 1945 Constitution should not be separated from the framework of religious values, especially being dragged to the neutral pole of religion. This kind of understanding, besides being mistaken, is also a betrayal of the noble ideals of the nation's founders, it will also end in vain, because the Indonesian people in general cannot be released from religious teachings, specifically Muslims as the majority of the people in Indonesia is certainly difficult to be released from the teachings of Islam both aqeedah and sharia.

The Constitutional Court also stated "The principles of the Indonesian rule of law must be seen from the perspective of the 1945 Constitution, namely the rule of law which places the principle of the Almighty God as the main principle, as well as the religious values that underlie the life of The nation and state, not the state that separates the relationship between religion and state, and do not merely hold to the principle of individualism or the principle of communalism ". The right to self-protection in Indonesia must have a view of the application of laws based on the Pancasila state, all policy makers in interpreting the right to self-protection must be in accordance with the ideals of the nation, and the nation's ideology, there is no self-protection whose application is individualistic, for example in terms of protecting the rights of a group in ignoring the obligation to respect the rights of others.

Based on the explanation above regarding the ideological direction and the concept of human rights in Indonesia, it is clear that in fact there are no more interpretations regarding the application of the right to self-protection, as the ruling of the Constitutional Court Number 46 / PUU-XIV / 2016 which decides on the lawsuit of several conflicting legal rules with the right to self-protection, but the interpretation of the law in the decision of the Constitutional Court is very impressed to ignore the right to self-protection of others and open space for efforts to include ideologies that conflict with Pancasila through the interpretation of human rights rules and norms that are loose, but it is necessary to know that every interpretation of the law which then becomes a legal norm, the rule of law provides legal uncertainty for its citizens. And also the application of the Criminal Code (KUHP) in Indonesia, especially in terms of self-protection is very ignoring the rights and obligations of a person to respect other human rights, so that if someone is not happy with deviations from other human rights, they cannot be punished and given the sanctions.

For example, in the case of the right to self-protection which does not respect and cannot be punished by someone for their actions, it has actually disturbed the rights of others around them. In the Criminal Code, it gives the impression of tolerance and permissiveness towards the occurrence of sexual crimes in the community, in accordance with Article 292, it can be interpreted as *a contrario* when same sex abuse occurs as an adult and

[17] Muhammad Hatta, Pengertian Pancasila, (Jakarta: CV Haji Masagung, 1989)

is allowed by law or at least not considered wrong by this article. Neglect of obscene acts and same-sex sexual crimes committed by adults will give the impression in the eyes of children that these actions are legitimate Children then imitate their imitation theory which will eventually lead to the occurrence of sexual abuse and also sexual offenses committed by children with children. For that reason, as an important part of the pillars of child protection, we are all here as elements of the state that are responsible for realizing child protection commitments, one of which is through improving regulations.

The perspective of the KPAI study is classified into 2. First, the general study is related to the perspective of adultery and also sexual abuse in the Criminal Code. Adultery in the Criminal Code adheres to a liberal understanding of the human body. Liberalism liberates or releases the context of community interests and social order over one's body. The body is only a matter of autonomy itself, including reproduction and genitals so that it allows free sex on the basis of mutual love. The body for the person or owner is assumed to be a personal and domestic affair, not a social affair and not a state affair, and I think this is 180 degrees different from our post-reform commitment related to making domestic affairs when it is related to social order, it is included in the scope of legal arrangements. Including the extreme liberating even against the presence of the state on the body of people so that the act of adultery whose perpetrators are not related to the family formulated by the Criminal Code is not an offense. The liberal understanding of adultery violations in the Criminal Code does not have constitutional juridical legitimacy and justification, especially after the amendment. Article 28G paragraph (1) of the 1945 Constitution recognizes the right of every person to protect themselves, family, honor, dignity, and property.

Historically, the inclusion of the objective element "minors of the same sex" in the *a quo* article is clearly a 'victory' for homosexuals and some members of the Dutch Tweede Kamer who are indeed affirmative of the practice of homosexuality, even though the practice of homosexuality is clearly one Sexual behavior that is intrinsically, humanly, and universally is very despicable according to religious law and the light of God and living law values so that we think that the words "adult", the phrase "immature", and the phrase " which he knows or should reasonably expect to be immature ”in Article 292 of the Criminal Code should be declared contrary to the 1945 Constitution and has no binding legal force.

Thus, the 1945 Constitution must not allow absolute freedom for everyone to act solely according to his will, moreover in the case of such actions clearly reducing, narrowing, exceeding the limits, and in conflict with religious values and the divine light. Therefore, when the 1945 Constitution intersects with religious values, the 1945 Constitution as a Godly Constitution must affirm its identity as a guarantor of freedom of religion and not freedom from religion so that all legal certainty in the form of legal norms reducing, narrowing, exceeding limits, and even contrary to religious values and the light of God must be declared contrary to the 1945 Constitution and do not have binding legal force.

Concerns about the potential deviations of power that will be carried out by law enforcement officers in the context of law enforcement against adultery, rape, and homosexuals, is not really a matter of constitutionality of norms. Every process of proving elements of a criminal offense in any country always requires a professional proving process and must be based on good faith and the principle of presumption of innocence and even in Islamic teachings, there is a threat of punishment that is no less severe for every person in good faith bad accuses other people of adultery without based on evidence and a process of proof that can be accounted for.

The rise of "vigilantism" (*eigenrichting*) that has been carried out by the public against banned sexual offenders (both in the form of adultery, rape, and homosexuality) actually occurs because the religious values and living law of the people in Indonesia do not get a proportional place in the legal system (criminal) of Indonesia so that if there has been a modification of legal norms (legal substance) regarding this matter, it is expected that the structure (legal structure) and legal culture of Indonesian people in responding to the phenomenon of a quo deeds can also change for the better. And this actually encourages the state's policy to make legal products that are not individualistic from the perspective of human rights in Indonesia, from the explanation above, it is answered in our analysis that the right to self-protection in Indonesia still causes multiple interpretations even at the level of judges of the Constitutional Court has a different interpretation so that it opens up a room for liberal Ham to enter Indonesia because some legal rules have not been limited to the obligations as set out in the Constitution and the interpretation of Pancasila.

B. Analysis of Interpretation of Human Rights Restrictions in the 1945 Constitution viewed from the Pancasila ideology.

Whereas based on the above explanation, an interpretation of human rights and the limitations of human rights in Indonesia is obtained, namely the concept of human rights and the interpretation of the right to self-protection in Indonesia that is "limitative", meaning that the concept of human rights is limited by basic human rights obligations. Juridically this provision has also been regulated in article 28J of the 1945 Constitution after amendment, article 61 paragraph (1) and article 70 of Law No. 39 of 1999 concerning Human Rights. Even as stated in the explanation of the opening of the law above the enforcement of human rights must

prioritize the rights of the nation and state rather than individual rights. And this has become a top priority in the state that everyone must respect the rights of others first if they want their rights to be fulfilled and this is a concept built by the founder of the Indonesian nation, this concept was born from the philosophy of Pancasila which is not familiar with the concept of human rights that is individualistic, then it is clear that the right to self-protection must be interpreted if it is in opposition. According to Prof. Jimly the concept of human rights in Indonesia is more likely to rely on the principle of collectivism or kinship, not being "liberalist-individualistic". It is also in accordance with the initial concept of the formation of a constitution that requires the formation of a constitution must be based on the principle of kinship, that is, a principle which totally opposes the understanding of liberalism and individualism.

Theoretically the view of human rights gave rise to two views, namely the view from Natural Right and the view of Cultural Relativism. According to the theory of the Natural Right, human rights are rights owned by mankind at all times and in all the places where he was born as a human being. According to Cultural, Human Rights Relativism is very dependent on humans as creatures that always produce cultural, social, also different cultural traditions and civilizations in which there are also different views. These two theories then gave rise to the views of universal human rights and relative human rights.[18]

The concept of universal human rights holds that human rights are natural rights that humans have from birth. Universalism then brings out to the uniformity of views on human rights, including human rights standards. Whereas the concept of human rights relatively considers that although human rights are owned by all people on earth, every society and every country has different views about human rights.[19] The concept of relative human rights is in line with the view of HestuCiptoHandoyo, which states that there is a contextual dimension in the enforcement of human rights, namely the dimensions relating to the application of human rights when viewed from the place where these human rights are enacted. The point is that human rights ideas can be implemented effectively, as long as the "place" of human rights ideas provides an atmosphere which is conducive to it.[20] Therefore, although human rights are universal, the implementation of human rights cannot be generalized between one State and another. Each country certainly has different social, cultural and legal contexts. Besides that, historical experience and the development of society greatly influence the enforcement of human rights.[21]

Whereas regarding human rights responsibilities, the amendment to the 1945 Constitution also needs to regulate strictly and progressively the main responsibilities of the state, in this case the government, to respect, protect and fulfill human rights. The conception of progression or the promotion of human rights is important so that state administrators prioritize their responsibilities, both for civil and political rights as well as social and cultural economic rights. Articles concerning state responsibility in respecting, protecting and fulfilling human rights must be made specifically, including the consequences of *impeachment* which constitute its constitutional basis (for example: inserting a clause "proven to have violated human rights" in article 7A of the 1945 Constitution). In addition, with the possibility of certain political momentum, it is also necessary to consider if you want to make a total change to the 1945 Constitution (not amendment), which is to place the recognition and protection of human rights first in the opening or initial articles in the constitutional structure before the regulation of power and state institutions that execute their power.[22]

Provisions which provide constitutional guarantees of human rights are very important and are even considered to be one of the main characteristics of the principle of the rule of law in a country. However, in addition to human rights, it must also be understood that everyone has basic human rights and responsibilities. This is the style of human rights law in Indonesia. Every person, during his life since before birth, has the rights and obligations that are essential as humans. The formation of a state and government, for whatever reason, must not eliminate the principle of rights and obligations that all human beings carry. Therefore, guarantees of rights and obligations are not determined by the position of people as citizens of a country. Every person wherever he is must be guaranteed his basic rights. At the same time, every person wherever he is, is also obliged to uphold the rights of others as they should. This balance of awareness of the existence of basic rights and obligations is an important feature of the basic view of the Indonesian people regarding humanity which is just and civilized.

[18] Sri HastutiPuspitasari, *ibid* 7-8.
[19] *Ibid.,*
[20] HestuCiptoHandoyo, *ibid*
[21] Bambang Sutiyoso. *ibid*
[22] Wiratraman, R. Herlambang Perdana, *ibid*

IV. CONCLUSION

The 1945 Constitution which was approved by the Indonesian Independence Preparatory Committee on August 18, 1945 in its preparation underwent a process that involved a variety of ideas based on certain ideologies, the debate covering the basis of the state, the systematics of the Constitution, material content and others. One of the issues being debated is the need to include human rights in the draft constitution. Historical development has proven that human rights are not born by liberalism and individualism, but by absolutism, human rights arise as a reaction to absolutism of arbitrary actions of the authorities, in other words, human rights arise as a result of conflict between the authorities and people who feel oppressed by absolute rulers. Therefore, the issue of human rights is a problem between individuals who hold power and individuals who do not have power, the issue of human rights is a problem that arises as a result of tensions between those in power and those controlled, between those who govern (the ruler, the governor) and the ruled, the governed.

The concept used is "Citizens 'Rights" instead of "Human Rights", the use of the concept of "Citizens' Rights" means that it is implicitly not recognized by the understanding of natural rights which states that human rights are rights owned by humans because they were born as human. As a consequence of that concept, the state is placed as a "regulator of rights", not as a "guardian of human rights" – as put in place by the International Human Rights protection system.

In the explanation of the 1945 Constitution it is stated: "... in this opening the definition of a unitary state is accepted. The state protects and covers the entire nation. So the state overcomes all group understandings, overcomes all individual understandings ..."This shows that the application of human rights in Indonesia requires a balance and harmony between rights and obligations as a manifestation of Pancasila morality. In other words, freedom and individual freedom must be harmonious and balanced with national interests. Based on this, it can be understood that the concept of upholding human rights in Indonesia is limited. This means that the concept of upholding human rights is limited by basic or fundamental obligations.

The second amendment of the 1945 Constitution has made changes to the regulation of human rights in Indonesia. before the second amendment of human rights provisions in the 1945 Constitution are regulated separately, but after the second amendment, the 1945 Constitution has arranged human rights more systematically in one chapter, namely in articles 28A to article 28J of the 1945 constitution. These articles have become a constitutional basis for human rights protection in Indonesia. As for the types of human rights according to Law no. 39 of 1999 include: Right to life, Right to self-development, Right to justice, Right to personal freedom, Right to security, Right to welfare and Right to participate in government.

Human rights in Indonesia are more likely to rely on the principle of collectivism or family, not "liberalist-individualistic". It is also in accordance with the initial concept of the formation of a constitution that requires the formation of a constitution must be based on the principle of kinship, namely the principle which totally opposes the understanding of liberalism and individualism. In a national state, the lives of individuals from various ethnic groups that are already part of citizens have the same rights and obligations, for that there are three things that need to be explained first: First, there must be a correct interpretation of the arrangements (automatically) each country with respect to the entire population group; Second, conducting observations relating to the existence of various ethnic groups and social groups in terms of existing legal rules; Third, the exact position of the various groups in which individuals belong to various groups.

In universalism, an individual is a social unit that has rights that cannot be denied, and are directed towards the fulfillment of personal interests. In cultural relativism, a community is a social unit. In this case, concepts such as individualism, freedom of choice and equality are unknown. What is recognized is that community interests are the top priority. This doctrine has been applied in various countries that oppose every application of the concept of rights from the west and consider it to be cultural imperialism. However, these countries ignore the fact that they have adopted the concept of nation-state from the West and the goal of modernization actually includes economic prosperity.

The Indonesian country is a nation that is rich in culture, if we look at the concept of human rights after the second amendment of the 1945 Constitution by placing human rights as important issues so that they are separated and regulated in such a special chapter, then it can be said that the Government has become better in addressing human rights issues compared to the years before the amendment to the 1945 Constitution. However, if we look at the implications that occur thereafter, then a rule is needed that does not only accommodate all forms of individualistic human rights, because law number 39 of 1999 concerning human rights has the contents are not much different from the basic regulation, namely Article 28A – 28J in the 1945 Constitution. This is feared will lead to the concept of individuals that are extreme with national style in Indonesia, as seen from several institutions and commissions that arise as a result of slowly shifting the values of collectivity by bringing up the principle of individual independence apart from the protection of human rights.

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