

# INDONESIAN CONSTITUTIONAL GUARANTEES AGAINST DISCRIMINATORY TREATMENT: AN EMPIRICAL STUDY

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## *Abstract*

*The right to be free and protected from discriminatory treatment is universal. Such right is incorporated into the 1945 Constitution of the Republic of Indonesia. This paper examines the perception of international students (30 respondents) in Indonesia regarding the discriminatory treatment they have experienced and the effort of the Indonesian Government to address such issue in educational institutions. The study focuses on the operation of positive law, particularly Article 28I Paragraph (2) and Paragraph (4) of the 1945 Constitution. The method used was empirical legal research, combined with statutory and sociological approaches, utilizing primary data (from questionnaires) and secondary data. The analysis of questionnaire output reveals a concerning reality of discriminatory treatment in various forms experienced by the respondents. A significant percentage of them experience discriminatory treatment and perceive a lack of effective measures to address and prevent such discrimination in educational institutions. Recommendations are made to bridge the gap between constitutional guarantees and the actual experiences of international students: Indonesian government should strengthen the implementation of anti-discrimination laws, foster inclusive environments in educational institutions, and enhance government efforts through better monitoring, complaint systems, and legal remedies for victims, in alignment with constitutional guarantee.*

**Keywords:** *the 1945 Constitution of Republic of Indonesia; International Students; Discriminatory Treatment; Human Rights*

## **1. Introduction**

The universality of human rights has long been recognized as a fundamental principle that transcends borders and applies to all individuals regardless of their nationality, race, sex, and religion. One of the rights is the right to be free and protected from discriminatory treatment which is a cornerstone of a just and equitable society. Indonesia, as a signatory to the Universal Declaration of Human Rights (UDHR) and a party to legally binding international treaties on human rights such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), has a solemn duty to uphold and protect these rights on its land.

The core to this discussion is the 1945 Constitution of the Republic of Indonesia (“1945 Constitution”), which incorporates the right of “everyone” to be free from discriminatory treatment as stated in Article 28I Paragraph (2); “Everyone shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such

discriminatory treatment.” The 1945 Constitution also imposes upon the Indonesian State the duty to protect and uphold the right of "everyone" as stated in Article 28I Paragraph (4); “The protection, advancement, upholding, and fulfillment of human rights are the responsibility of the State, especially the government.” Hence, it is the state's responsibility to uphold, respect, and defend those rights.<sup>1</sup>

The term "everyone" encompasses all individuals, regardless of their nationality, race, and religion, who are living or residing in Indonesia. Such a term encompasses not only Indonesian citizens but also foreign nationals living or residing in Indonesia.<sup>2</sup> This is strengthened by the statement of the Indonesian constitutional law expert, Bivitri Susanti, “(...) [Article 28I Paragraphs 2 and 4 of 1945 Constitution] makes it clear that the Indonesian Constitution aims to protect the rights of everyone, including foreign citizens.”<sup>3</sup> Consequently, foreign nationals, including international students, in Indonesia possess the same right to be protected from discriminatory treatment as any other individual residing within Indonesian territory.

This paper seeks to obtain an empirical result on the experience and perception of a sample of international students (respondents) residing in Indonesia concerning the implementation of their rights to be free and protected from discriminatory treatment under the 1945 Constitution. A review of existing literature on the subject is imperative to provide context for this research. On the one hand, scholars such as Tibaka *et al.*,<sup>4</sup> and Juwana<sup>5</sup> underscore the pivotal role of constitutional protections in ensuring equal treatment and combating discrimination. However, they also identify the challenges in effectively implementing and enforcing these provisions, revealing a critical gap between constitutional ideals and practical realities.

On the other hand, the right to be free and protected from discriminatory treatment is still being trespassed in educational institutions, especially for international students. Torres *et al.*

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<sup>1</sup> Sekar Anggun Gading Pinilih *et al.*, “The Legal Policy Of Citizenship In Fulfilling The Rights Of Stateless Persons As An Effort To Fulfill Human Rights In Indonesia,” *Diponegoro Law Review* 7, no. 1 (April 28, 2022): 17–33, <https://doi.org/10.14710/dilrev.7.1.2022.17-33>.

<sup>2</sup> Efer Koritelu and R. Ismala Dewi, ‘The Granting of Legal Standing to Foreign Nationals in Filing Judicial Review in Indonesia’, in *Proceedings of the 3rd International Conference on Law and Governance (ICLAVE 2019)*, vol. 130 (Atlantis Press, 2020), 120–30, <https://doi.org/10.2991/aebmr.k.200321.016>.

<sup>3</sup> Utami Argawati, “Indonesian Constitution Protects Human Rights of Everyone Including Foreign Nationals,” *MKRI*, accessed on February 23, 2024 from [en.mkri.id/news/details/2023-01-16/Indonesian%20Constitution%20Protects%20Human%20Rights%20of%20Everyone%20Including%20Foreign%20Nationals](https://en.mkri.id/news/details/2023-01-16/Indonesian%20Constitution%20Protects%20Human%20Rights%20of%20Everyone%20Including%20Foreign%20Nationals).

<sup>4</sup> Leli Tibaka and Rosdian Rosdian, ‘The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia’, *FIAT JUSTISIA: Jurnal Ilmu Hukum* 11, no. 3 (28 February 2018): 266, <https://doi.org/10.25041/fiatjustisia.v11no3.1141>.

<sup>5</sup> Hikmahanto Juwana, ‘Human Rights in Indonesia’, *Indonesian Journal of International Law* 4, no. 1 (12 August 2021), <https://doi.org/10.17304/ijil.vol4.1.131>.

emphasize the urgency of addressing such a situation as it harms the social integrity of the students.<sup>6</sup> Indeed, discriminatory treatment strongly and negatively impacts their educational experience, violating their fundamental rights.

Nurfaika and Ramalina found that the protection of fundamental rights can be strengthened through its elevation to constitutional right as constitution is the highest level of law in a country. In the case of Indonesia, such highest law is the 1945 Constitution which stands above all laws and regulations applicable in the country.<sup>7</sup> The right to be free and protected from discriminatory treatment is stipulated under Article 28I Paragraph (2) and Paragraph (4) of 1945 Constitution, rendering it a constitutional right. Nevertheless, discriminatory treatment may appear in different forms in social life. For instance, it exists in higher educations in Indonesia as highlighted by the research conducted by Khairah *et al.* in which the discriminatory treatment was based on social class.<sup>8</sup> International students may as well experience such discriminatory treatment, which is detrimental to their well-being and hinders the access to a positive experience in foreign higher education.<sup>9</sup> Through empirical research, this paper seeks to provide insights into the lived experiences of international students (respondents) in Indonesia and to assess the extent to which their rights were upheld in accordance with the principles enshrined in the 1945 Constitution. Thus, it is clear that the state of the art of this paper lies on studying the correlation between the perception of the respondents on their experience of discriminatory treatment and the Indonesian constitutional guarantees to protect them.

In the context of the provided background, our research endeavors to address three central inquiries. Firstly, we aim to elucidate the juridical framework of the right to be free and protected against discriminatory treatment. Secondly, we seek to unravel the correlation between the experiences of discriminatory treatment reported by the respondents within Indonesian educational institutions and the constitutional provisions articulated in Article 28I Paragraph (2) of the 1945 Constitution. Lastly, we endeavor to explore the correlation between the perceptions of the

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<sup>6</sup> Lucas Torres, Mark W. Driscoll, and Maria Voell, 'Discrimination, Acculturation, Acculturative Stress, and Latino Psychological Distress: A Moderated Mediation Model.', *Cultural Diversity and Ethnic Minority Psychology* 18, no. 1 (2012): 17–25, <https://doi.org/10.1037/a0026710>.

<sup>7</sup> Nurfaika Ishak and Mikea Manitra Ramalina Ranaivo, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2 April 2022): 31–44, <https://doi.org/10.53955/jhcls.v2i1.24>.

<sup>8</sup> Khairiah Khairiah et al., 'Discrimination in Online Learning During the COVID-19 Pandemic in Indonesian Higher Education', *Journal of Law and Sustainable Development* 11, no. 3 (1 August 2023): e710, <https://doi.org/10.55908/sdgs.v11i3.710>.

<sup>9</sup> Corinne M. Karuppan and Mahua Barari, 'Perceived Discrimination and International Students' Learning: An Empirical Investigation', *Journal of Higher Education Policy and Management* 33, no. 1 (31 December 2010): 67–83, <https://doi.org/10.1080/1360080X.2011.537013>.

respondents regarding the Indonesian government's initiatives to combat discriminatory treatment within educational settings and the constitutional obligations outlined in Article 28I Paragraph (4).

## **2. Method**

Legal research is a scientific activity based on certain methods, systematics, and ideas that aim to study one or several specific legal phenomena by analyzing them.<sup>10</sup> The method used in this research was empirical legal research, which is a research conducted by analyzing the implementation of laws and regulations on problems that occur in society,<sup>11</sup> concerning the implementation of Article 28I Paragraph (2) and Paragraph (4) of the 1945 Constitution to international students in the scope of discriminatory treatment. The author used statutory and sociological approaches. The statutory approach is an approach that is carried out by reviewing all laws and regulations related to the legal issue addressed.<sup>12</sup> The sociological approach is an approach that studies social structure and social processes, especially social changes.<sup>13</sup> This research employed both primary and secondary data sources. The primary data was collected through questionnaires distributed to international students, while the secondary data was obtained from regulations, legal literatures, and scientific journals. The data analysis method used in this study was qualitative; the data were obtained, analyzed, and presented in written words supported by quantitative and qualitative data. This method aims to analyze the facts and data obtained, either primary or secondary, to draw a deductive analysis.

The questionnaires use the 6-point Likert scale consisting of the following points: (1) Strongly disagree; (2) Disagree; (3) Neither agree nor disagree; (4) Agree; (5) Strongly agree; (6) No experience of discriminatory treatment. The questions asked to the respondents are: (1) Have you experienced any discriminatory treatment in your interactions with individuals in Indonesian educational institutions; (2) Do you agree that the Indonesian Government has taken adequate measures to address and prevent discriminatory in educational institutions. We also gave the opportunity to fill a short answer concerning the (3) form of discrimination they have encountered in Indonesia. The respondents in this study were selected using simple random sampling, a method

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<sup>10</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum*, vol. 3 (Pasuruan: QIARA MEDIA, 2021), 1.

<sup>11</sup> *Ibid.*, 3:63.

<sup>12</sup> Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, 'Metodologi Normatif Dan Empiris Dalam Perspektif Hukum', *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (17 January 2021): 11, <https://doi.org/10.51749/jphi.v2i1.14>.

<sup>13</sup> Bachtiar, *Metode Penelitian Hukum*, ed. Oksidelfa Yanto (Tangerang Selatan: UNPAM PRESS, 2019), 64.

by which the researchers randomly selected a subset of participants from a population.<sup>14</sup> In this research, the population was international students, from which we obtained 30 respondents, considering they were currently studying in Indonesia (see Table 1).

**Table 1.**  
**Respondent Demographics**

<b>Baseline Characteristics</b>		<b>n</b>	<b>%</b>
Gender	Male	16	53.3
	Female	14	46.7
Age	Under 18	4	13.3
	18 – 24	8	26.7
	25 – 34	3	10
	34 and more	15	50
Country of Origin	Madagascar	12	40
	Algeria	2	6.66
	Zimbabwe	2	6.66
	Bangladesh	2	6.66
	Chad	2	6.66
	Pakistan	2	6.66
	Rwanda	1	3.33
	Syria	2	6.66
	Timor Leste	2	6.66
	Uganda	1	3.33
Yemen	2	6.66	

\*Notes. n= Frequency, %= Percentage

### **3. Results and Discussion**

#### **3.1. Juridical Framework of the Right to Be Free and Protected from Discriminatory Treatment**

##### **3.1.1. The Right to Be Free and Protected from Discriminatory Treatment under International Law**

The international landscape of human rights protection is firmly anchored in a series of foundational treaties and conventions that collectively prioritize the principle of non-discrimination as a fundamental human right. These international agreements, including UDHR,

<sup>14</sup> Sukmawati, Salmia, and Sudarmin, "Population, Sample (Quantitative) and Selection of Participants/Key Informants (Qualitative)," *EDUMASPUL Jurnal Pendidikan* 7, no. 1 (2023): 135.

ICCPR, ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), serve as the bases of equality and justice in a diverse world.

UDHR is a cornerstone of international human rights law, adopted by the United Nations General Assembly in 1948. Article 7 of UDHR explicitly emphasizes equality before the law, asserting that everyone is entitled to equal protection without discrimination. This article represents a fundamental human right and guides other international agreements and conventions.

The other pivotal international treaty, ICCPR, reinforces the prohibition of discrimination. Article 26 of ICCPR unequivocally states that discrimination based on various grounds, including race, color, sex, language, religion, and political or other opinion, is strictly prohibited. This covenant underscores the commitment of state parties to ensure that individuals are treated equally and fairly under the law, regardless of their personal characteristics.

Complementing ICCPR, ICESCR focuses on economic, social, and cultural rights. Article 2(2) of ICESCR asserts that everyone must enjoy these rights without discrimination. This provision highlights the importance of eradicating discrimination that might impede individuals from accessing essential socio-economic rights such as education, healthcare, and adequate living conditions.

Moreover, CEDAW is a crucial treaty addressing gender-based discrimination. CEDAW goes beyond generic anti-discrimination provisions and explicitly prohibits discrimination against women in all of its forms. This includes addressing gender-based discrimination in education, employment, and political participation, promoting gender equality globally.

Dedicated to safeguarding children's rights, CRC takes a comprehensive approach by prohibiting discrimination against children on various grounds, including race, sex, religion, and social origin. The convention underscores the need to protect and promote the well-being of the world's youngest citizens.

Beyond these core treaties, several other international instruments play vital roles in combatting discrimination. For instance, the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) addresses the heinous crime of genocide, which involves the intent to destroy a specific group based on ethnicity, race, religion, or nationality. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) extends the prohibition of racial discrimination across civil, political, economic, social, and cultural rights. Additionally, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

(CRMW) safeguards the rights of migrant workers, emphasizing their rights to be free from discrimination.

The prohibition against discrimination is a bedrock principle of international human rights law. This principle is fundamental to ensuring that all individuals, regardless of race, sex, religion, nationality, or any other status, are treated with dignity and equality. Indeed, dignity provides a convenient language for adopting substantive interpretations of human rights guarantees, which appear to be intentionally, not just coincidentally, highly contingent on local circumstances.<sup>15</sup> The aforementioned international agreements collectively reinforce the commitment of states to eliminate discrimination and uphold the rights of everyone.

The Indonesian Government has affirmed its commitment to international human rights agreements by officially adopting several key instruments. For instance, Indonesia was the party to the CEDAW in 1989, followed by the ratification of the CRC on 5 October 1990, the CAT on 27 November 1998, and the CERD on 25 July 1999. Moreover, the government also pledged to ratify the International Labor Organization (ILO) Convention. In accordance with the National Action Plan for Human Rights (RANHAM) for 1999-2004, there was an expressed intent to ratify two pivotal instruments, the ICCPR and the ICESCR. However, as of the end of December 2004, these covenants had not been formally ratified. Subsequently, during the RANHAM initiative spanning from 2004 to 2009, under the leadership of the Yudhoyono regime, the Indonesian government fulfilled its commitment by officially ratifying both the ICCPR and the ICESCR.<sup>16</sup> RANHAM initiative is still ongoing nowadays in Indonesia, showcasing advancements and improvements of human rights objectives through generations (e.g., RANHAM 2021-2025).

### **3.1.2. The Right to Be Free and Protected from Discriminatory Treatment under National Law**

#### **3.1.2.1. The Right to Be Free and Protected from Discriminatory Treatment under the 1945 Constitution**

In Indonesia, human rights are inherent and universal, granted by the creator, God Almighty, to all human beings. These rights, essential to human dignity and morality, cannot be ignored or

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<sup>15</sup> Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights', *European Journal of International Law* 19, no. 4 (1 September 2008): 655–724, <https://doi.org/10.1093/ejil/chn043>.

<sup>16</sup> Herlambang P. Wiratraman, 'Human Rights Constitutionalism in Indonesia's Foreign Policy', *Constitutional Review* 1, no. 1 (28 March 2016): 135, <https://doi.org/10.31078/consrev116>.

taken away by anyone. Alongside these rights come corresponding responsibilities to ensure their protection and respect for others' rights.

A turning point in the human rights history of Indonesia was the 1999-2002 amendment of the 1945 Constitution.<sup>17</sup> Several explicit and clear provisions on human rights were included in the 1945 Constitution as stipulated from Article 28A to Article 28J. A significant change is the recognition of non-derogable rights in Article 28I Paragraph 1, including the right to life, protection from torture, freedom of thought and conscience, religious freedom, protection from slavery, recognition as a person before the law, and immunity from retroactive laws.<sup>18</sup> These rights are inviolable and must be effectively safeguarded by the State. Additionally, Article 28I Paragraph 2 also constitutes a remarkable change as it addresses the right to be free and protected from discriminatory treatment.

The State is duty-bound to protect and guarantee the human rights of its citizens. Failure to do so can lead to legal action, as the state's omission to protect these rights constitutes a violation. The State may even become the perpetrator in cases of gross violation of human rights, as alleged during the New Order Era. Moreover, Indonesia has to implement the effectiveness principle, which requires that all provisions of human rights treaties or conventions be interpreted and applied to make their safeguards practical and effective.<sup>19</sup>

The following is the list of several primordial articles within the 1945 Constitution that emphasize the importance of human rights protection:

- Article 28D Paragraph 1 ensures that everyone has the right to recognition, guarantees, protection, legal certainty, and equal treatment before the law. It also outlines the non-derogable rights which cannot be diminished under any circumstances.
- Article 28I Paragraph 2 emphasizes the rights to be free from discriminatory treatment and to protection against such discrimination.
- Article 28I Paragraph 4 places the State's responsibility for protecting, promoting, enforcing, and fulfilling human rights on the state, especially the government. Neglecting this

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<sup>17</sup> Luthfi Widagdo Eddyono, 'The First Ten Years Of The Constitutional Court Of Indonesia: The Establishment Of The Principle Of Equality And The Prohibition Of Discrimination', *Constitutional Review* 1, no. 2 (28 March 2016): 119, <https://doi.org/10.31078/consrev126>.

<sup>18</sup> Ahmad Hambali, "Penyelesaian Pelanggaran Berat HAM Masa Lalu Sebagai Pelaksanaan Pasal 28I Ayat (2) UUD NRI Tahun 1945," *Hasanuddin Law Review* 1, no. 2 (August 26, 2015): 266, <https://doi.org/10.20956/halrev.v1n2.83>.

<sup>19</sup> Heribertus Jaka Triyana, 'The Role of the Indonesian Constitutional Court for An Effective Economic, Social and Cultural Rights Adjudication', *Constitutional Review* 1, no. 1 (28 March 2016): 72, <https://doi.org/10.31078/consrev114>.



responsibility may result in the state deemed violating these constitutional provisions, including discriminatory actions in handling cases, as per Article 28I Paragraph 2, which ensures protection against discriminatory treatment for everyone.

### **3.1.2.2. The Right to Be Free and Protected from Discriminatory Treatment under Law No. 40 of 2008 concerning Elimination of Racial and Ethnic Discrimination**

Under Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discriminations in Indonesia, a detailed legal framework aims to protect individuals from discriminatory treatment based on race and ethnicity. The law outlines various provisions and mechanisms to address and prevent racial and ethnic discrimination. The followings are the key elements of the legal framework provided by Law No. 40 of 2008, complemented by the Government Regulation No. 56 of 2010 concerning Procedures for Supervision of Efforts to Eliminate Racial and Ethnic Discrimination:

- Definition of racial and ethnic discriminations: Law No. 40 of 2008 defines racial and ethnic discrimination as any distinction, exclusion, restriction, or preference based on race, ethnicity, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in various fields of public life.
- Prohibition of discrimination: Law No. 40 of 2008 explicitly prohibits racial and ethnic discriminations in all aspects of public life, including employment, education, access to public services, participation in public affairs, and the exercise of civil, political, economic, social, and cultural rights.
- Right to equality: Law No. 40 of 2008 grants the right to equal treatment to obtain civil, political, economic, social, and cultural rights in accordance with statutory provisions, without distinction of race and ethnicity.
- Obligation to combat discrimination: Law No. 40 of 2008 obliges everyone to contribute to the fight against discrimination as determined by law.
- Right to effective remedies: Individuals subjected to racial or ethnic discrimination have the right to seek effective remedies through the legal system. This includes the right to file complaints and have them investigated and adjudicated by competent authorities.
- Prohibition of hate speech and hate actions: Law No. 40 of 2008 explicitly prohibits hate speech and hate crimes based on race or ethnicity. It addresses situations in which individuals

or groups incite racial hatred or engage in violence or harassment against others based on their race or ethnicity.

- Role of the Indonesian National Human Rights Commission (Komnas HAM): The law grants authority to the Indonesian National Human Rights Commission (Komnas HAM) to supervise the implementation of the law. Komnas HAM is responsible for monitoring and addressing the cases of racial and ethnic discrimination and ensuring that the law is effectively enforced.

### **3.1.2.3. Indonesian State Responsibility**

The provisions of the 1945 Constitution do not specifically mention the responsibility of the State to regulate human rights. It only mentions the responsibility of the State in general and the government in particular in protecting, promoting, enforcing, and fulfilling human rights. To protect and uphold human rights, the government formulates laws and regulations on human rights based on the 1945 Constitution. The laws that are made are expected to be able to provide more specific regulations for the protection of human rights.<sup>20</sup>

The regulation of the State's responsibility is indirectly shown by Article 30 Paragraph (4) of the 1945 Constitution, which states that the Indonesian National Police, as an instrument of the State that maintains security and public order, is charged with protecting, safeguarding, and serving the community and upholding the laws. Understanding the provisions of the article, the Indonesian National Police is an instrument of the State, so the responsibility of the State is imposed on the Police. When elaborated, the duty to protect, promote, serve the community, and uphold the law does not only focus on the fields of defense and security but also touches the field of human rights. Police actions such as conducting investigations into certain violations of the law, overcoming terrorism, escorting demonstrations, and other actions are parts of the protection and enforcement of human rights.

The provision of Article 28I Paragraph (5) of the 1945 Constitution on implementing the guarantee and regulation of human rights is the enactment and adoption of Law No. 39 of 1999 concerning Human Rights. This law stipulates that the government is obliged and responsible for its efforts to respect, protect, uphold, and promote human rights. The government's obligations and responsibilities include implementation steps in the legal, political, economic, social, cultural, national security, defense, and other fields. The existence of this law is a milestone in the

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<sup>20</sup> Luh Putu Sela Septika, "Tanggung Jawab Negara Dalam Penyelesaian Pelanggaran Hak Asasi Manusia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 5, no. 4 (August 24, 2017): 661, <https://doi.org/10.24843/JMHU.2016.v05.i04.p03>.

establishment of human rights courts within the General Court as an effort to adjudicate human rights violations. Thus, on 23 November 2000, Law No. 26 of 2000 on Human Rights Courts was enacted.

The State's responsibility under Law No. 39 of 1999 is also realized through the National Commission on Human Rights (Komnas HAM). Komnas HAM is an independent institution whose position is at the same level as other state institutions aiming to improve human rights protection and enforcement. Komnas HAM carries out the functions of study, research, advice, monitoring, and mediation on human rights as regulated in Article 76(1) of Law No. 39 of 1999 to achieve this goal.

The responsibility of the State in Law No. 39 of 1999 is also realized through the existence of the Komnas HAM. Komnas HAM is an independent institution on the same level as other State institutions that aims to improve the protection and enforcement of human rights. To achieve this goal, Komnas HAM carries out the functions of study, research, counseling, monitoring, and mediation on human rights.

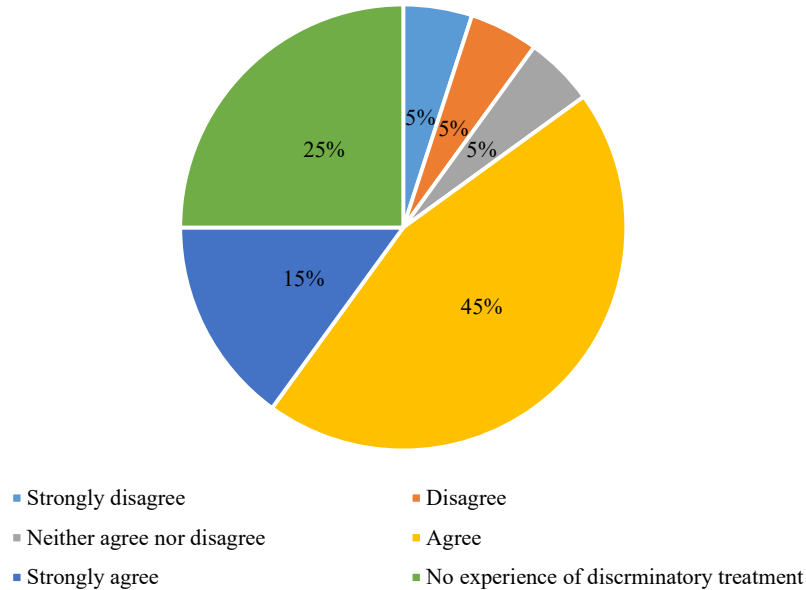
Law No. 26 of 2000 concerning Human Rights Court was established in fulfillment of Article 104(1) of Law No. 39 of 1999, which stipulates the need for a Human Rights Court to resolve gross human rights violations. Law No. 26 of 2000 adheres to the principle of non-retroactivity so that it can only try human rights violations occurred after this law was enacted (since 2000). The Human Rights Courts are located in four major cities in Indonesia, including Medan, Jakarta, Surabaya, and Makassar.<sup>21</sup> The location and position of the Human Rights Courts is in the districts or cities with the jurisdiction that covers the jurisdiction of the District Court concerned.

Law No. 26 of 2000 does not explicitly define the term gross violation of human rights but only mentions limitedly the types of acts that can qualify as gross human rights violations, namely the crime of genocide and crimes against humanity. Nevertheless, protecting human rights remains an important aspect that must be fought for by all parties. It emphasizes that the responsibility of the State is shown by the involvement of the State officials, from the arrest by the investigator of a person suspected of committing gross human rights violations to the examination and decision of the case.

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<sup>21</sup> Sela Septika, "Tanggung Jawab Negara Dalam Penyelesaian Pelanggaran Hak Asasi Manusia," 671.

### 3.2. Correlation between Experiences of Discriminatory Treatment by the Respondents in Indonesian Educational Institutions and Article 28I Paragraph (2) of the 1945 Constitution



**Figure 1. Respondents' Experiences of Discriminatory Treatment in Indonesian Educational Institutions**

The questionnaire results indicate that a significant percentage of international students in Indonesia encountered discriminatory treatments, with 15% strongly agreeing and 45% agreeing that they had experienced it. This finding aligns with the research conducted by Smith and Khawaja, which emphasizes the prevalence of discriminatory treatment among international students and its impact on their well-being and sense of belonging.<sup>22</sup> Similarly, Katia Koo's longitudinal study highlights how acculturative stress and satisfaction with collegiate experiences are interrelated, further supporting the challenges faced by international students.<sup>23</sup>

On the other hand, a considerable proportion of respondents (25%) reported not experiencing any discriminatory treatment in Indonesia. This finding supports the idea that some international students may have positive experiences of inclusivity and acceptance in the host country. The

<sup>22</sup> Rachel A. Smith and Nigar G. Khawaja, 'A Review of the Acculturation Experiences of International Students', *International Journal of Intercultural Relations* 35, no. 6 (November 2011): 699–713, <https://doi.org/10.1016/j.ijintrel.2011.08.004>.

<sup>23</sup> Katie Koo, Ian Baker, and Jiyeon Yoon, 'The First Year Acculturation: A Longitudinal Study on Acculturative Stress and Adjustment among the First Year International College Students', *Journal of International Students* 11, no. 2 (15 May 2021): 278–98, <https://doi.org/10.32674/jis.v11i2.1726>.

research by Ward and Masgoret highlighted the importance of studying both experiences of discrimination and experiences of support and inclusion to comprehensively understand the international student experiences.<sup>24</sup>

The questionnaire also reveals that 5% of them disagree that they had experienced discriminatory treatment with 5% of them neither agree nor disagree. These findings align with the notion that international students may have varying perceptions of their experiences of discriminatory treatment. The research by Yeo *et al.* emphasized the subjective nature of discrimination experiences and the importance of considering individual interpretations and contextual factors.<sup>25</sup>

Notably, only 5% of the respondents strongly disagree with experiencing discriminatory treatment. While this indicates a relatively small percentage, it is crucial to recognize their perspectives. The study by Cokley *et al.* highlighted that discrimination perceptions may vary based on personal backgrounds, previous experiences, and cultural contexts. Understanding the perspectives of the individuals who do not perceive discrimination may provide valuable insights into the complexity of the issue.<sup>26</sup>

The analysis of the questionnaire results on discriminatory treatment towards the international students in Indonesia allows for a correlation with Article 28I Paragraph (2) of the 1945 Constitution, which states that everyone shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment. This constitutional provision is intended to protect the rights of everyone, including international students, from discrimination and ensure equal treatment. The questionnaire results highlight the prevalence of discriminatory treatment experienced by the international students in Indonesia. This finding suggests that despite the constitutional guarantee of equal treatment before the law, there are still instances where international students face discriminatory practices. It indicates a gap between the constitutional provisions and the realities on the ground.

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<sup>24</sup> Colleen Ward and Anne-marie Masgoret, *The Experiences of International Students in New Zealand: Report on the Results of the National Survey*, New Zealand, 2004.

<sup>25</sup> HyeJin Tina Yeo *et al.*, 'Asian International Student and Asian American Student: Mistaken Identity and Racial Microaggressions', *Journal of International Students* 9, no. 1 (25 January 2019): 39–65, <https://doi.org/10.32674/jis.v9i1.278>.

<sup>26</sup> Kevin Cokley *et al.*, 'Impostor Feelings as a Moderator and Mediator of the Relationship between Perceived Discrimination and Mental Health among Racial/Ethnic Minority College Students.', *Journal of Counseling Psychology* 64, no. 2 (March 2017): 141–54, <https://doi.org/10.1037/cou0000198>.

To address the third question regarding the form of discrimination encountered, the respondents provided qualitative insights into their experiences. Common themes included language-based discrimination in which the students felt excluded or disadvantaged due to insufficient support in overcoming language barriers; cultural insensitivity, such as stereotyping or lack of respect for their cultural practices; and unequal treatment in academic settings. Some respondents also mentioned discrimination related to their skin colour, particularly when travelling on the university public transportation in which they observed instances of social avoidance, such as people refusing to sit next to them. Additionally, social exclusion by peers was highlighted, reflecting difficulties in building connections with local students. These narratives underscore the diverse and multifaceted nature of the discrimination faced by the international students in Indonesia.

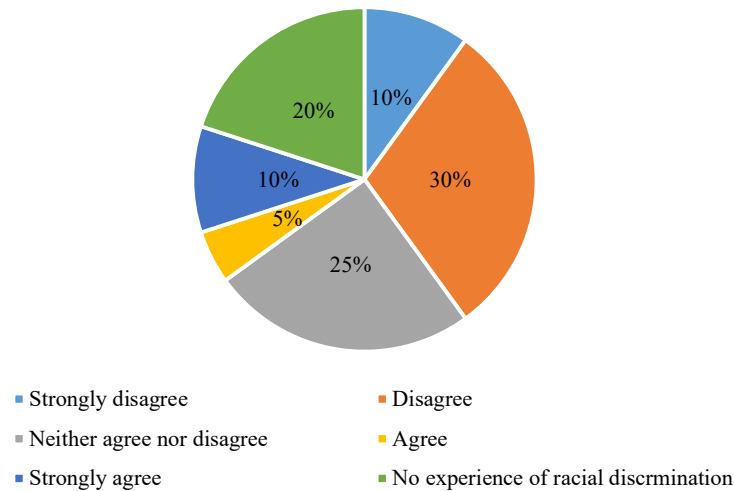
Therefore, the effectiveness of Article 28I Paragraph (2) in addressing discriminatory treatment towards the international students in Indonesia can be assessed based on the questionnaire results. While the constitutional provision guarantees the right to be free from discriminatory treatment, the questionnaire results reveal that a considerable percentage of respondents (45%) agree that they experienced discriminatory treatment. This suggests that there are challenges in fully realizing the intended protection and equal treatment guaranteed by the 1945 Constitution. The research conducted by Harisman on the protection of human rights in Indonesia shed light on the implementation and effectiveness of constitutional provisions in practice.<sup>27</sup> Moreover, Gumelar and Nachawri found that despite the idealistic idea of human rights under the 1945 Constitution, its protection can be challenging in reality.<sup>28</sup> Hence, examining the legal frameworks, policies, and measures to ensure the enforcement of Article 28I Paragraph (2) and addressing discriminatory treatment comprehensively are crucial. Scholars and policymakers can explore strategies to strengthen legal mechanisms, to raise awareness, and to promote inclusivity to bridge the gap between constitutional guarantees and the experiences of international students in Indonesia.

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<sup>27</sup> Harisman Harisman, 'Protection of Human Rights in the Amendment of the 1945 Constitution of The Republic of Indonesia', in *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, vol. 549 (Atlantis Press, 2021), 84–89, <https://doi.org/10.2991/assehr.k.210506.050>.

<sup>28</sup> Ilham Gumelar and Gunawan Nachrawi, 'Perlindungan Hukum Bagi Anggota Tni Berdasarkan Undang-Undang Hak Asasi Manusia (Studi Kasus Gerakan Separatis Organisasi Papua Merdeka)', *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 2 (2022): 4146–66, <https://doi.org/10.58258/jisip.v6i2.3110>. [In this research, the analysis focus on how the constitutional guarantees of human rights are respected when applied to the case of Papua. The result has found a concerning inconsistencies in the human rights protections in that region, marking a considerable failure of the Indonesian government to fulfill its duty to protect and respect human rights.]

### 3.3. Correlation between Perception of the Respondents on the Effort of Indonesian Government to Address Discriminatory Treatment in Educational Institutions and Article 28I Paragraph (4) of the 1945 Constitution



**Figure 2. Respondents' Perception on the Efforts made by Indonesian Government to Address Discriminatory Treatment in Educational Institutions**

The questionnaire results reveal that 10% of the respondents strongly agree that the Indonesian Government has taken adequate measures to address and prevent discriminatory treatment in educational institutions. This suggests that a minority of the international students perceived the existing measures as effective in tackling discrimination. However, it is essential to explore further the specific aspects of these measures and their impact on the students' experiences.

In contrast, 10% of the respondents strongly disagree that adequate measures have been implemented. An additional 30% of the respondents disagree, indicating that a significant portion of the international students perceived a lack of effectiveness in the measures taken by educational institutions or organizations. This finding aligns with the need for continuous improvement and comprehensive anti-discrimination policies in educational sector. The research conducted by Domínguez-Martínez and Robles emphasized the importance of proactive measures to combat discrimination and to create inclusive educational environments.<sup>29</sup>

<sup>29</sup> Tecelli Domínguez-Martínez and Rebeca Robles, 'Preventing Transphobic Bullying and Promoting Inclusive Educational Environments: Literature Review and Implementing Recommendations', *Archives of Medical Research* 50, no. 8 (2019): 543–55, <https://doi.org/10.1016/j.arcmed.2019.10.009>.

The results also reveal that 5% of the respondents agree, and 25% of them neither agree nor disagree with the statement regarding adequate measures to address discriminatory treatment. These mixed responses indicate a diversity of perceptions among the international students regarding the effectiveness of the measures. The research by Haase et al. highlighted the importance of considering individual perspectives and experiences when assessing the impact of anti-discrimination measures.<sup>30</sup>

A notable finding from the questionnaire is that 20% of the respondents did not experience discrimination in Indonesia. This suggests that a proportion of the international students had positive experiences, indicating that some educational institutions or organizations may have implemented effective measures to prevent discriminatory treatment. The research by Kunwar and Adhikari underscored the significance of fostering inclusive educational environments that promote equal treatment and support for all students.<sup>31</sup>

The analysis of the questionnaire results regarding the perceived adequacy of measures to address and prevent discriminatory treatment in Indonesian educational institutions allows for a correlation with Article 28I Paragraph (4) of the 1945 Constitution, which states that the protection, advancement, upholding, and fulfillment of human rights are the responsibility of the State, especially the government. It emphasizes the State's responsibility to ensure equal treatment and protection from discrimination for everyone, including international students.

The questionnaire results reveal mixed perceptions among the international students regarding the effectiveness of the measures. While 10% of the respondents strongly agree that adequate measures have been taken, 10% strongly disagree, and an additional 30% disagree. These findings indicate that a significant proportion of the international students perceive a lack of effectiveness in addressing discriminatory treatment in Indonesian educational institutions. Indeed, the State's failure to uphold its duty to protect the rights of the individual has a more fluid effect on vulnerable groups of people and may, in turn, have secondary effects on other rights of the individual.

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<sup>30</sup> Anna Haase, Anette Rohmann, and Katrin Hallmann, 'An Ecological Approach to Psychological Adjustment: A Field Survey among Refugees in Germany', *International Journal of Intercultural Relations* 68 (January 2019): 44–54, <https://doi.org/10.1016/j.ijintrel.2018.10.003>.

<sup>31</sup> Rajendra Kunwar and Sapana Adhikari, 'Understanding the Multifaceted Dimensions, Socio-Psychological Aspects, and Current Practices of Inclusive Education in Nepal: A Comprehensive Analysis', *South Asian Research Journal of Humanities and Social Sciences* 5, no. 04 (28 August 2023): 144–52, <https://doi.org/10.36346/sarjhss.2023.v05i04.010>.



The research conducted by Lindsey emphasized the importance of constitutional guarantees in protecting individuals from discrimination. However, they also highlighted challenges in translating these guarantees into effective policies and practices.<sup>32</sup> The mixed perceptions among the international students suggest a need for further efforts to ensure the effectiveness of Article 28I Paragraph (4) in addressing discriminatory treatment in educational institutions. The research conducted by Desi Hanara suggests that maximum incorporation of human rights into the judiciary's discussions and decisions may strengthen the protection of human rights. Implementing a human-rights-based judiciary would support bridging the gap between constitutional provisions and the realities experienced by international students.<sup>33</sup>

#### **4. Conclusion**

The juridical framework of the right to be free and protected from discriminatory treatment is established both internationally, through the instruments of UDHR, ICCPR, ICESCR, CEDAW, and CRC, and nationally, through the Indonesia's constitutional amendments (1999–2002) and Law No. 40 of 2008. The experiences of discriminatory treatment, in various forms, reported by the international students in Indonesian educational institutions reveal a gap between the constitutional guarantee of non-discrimination in Article 28I Paragraph (2) and the realities faced by these students. Furthermore, the respondents' perceptions of the Indonesian government's efforts to address discriminatory treatment highlight a need for stronger alignment with Article 28I Paragraph (4), which mandates the State to protect and advance human rights, indicating that current measures are insufficient and require enhancement to effectively safeguard international students.

To strengthen the juridical framework of the right to be free and protected from discriminatory treatment, Indonesia should ensure the effective implementation and enforcement of its anti-discrimination laws and policies. Educational institutions must address the gap between the constitutional guarantee in Article 28I Paragraph (2) and the realities of discrimination by fostering inclusive environments through awareness programs, cultural exchanges, and robust support systems for international students. Lastly, the Indonesian government should align its efforts with Article 28I Paragraph (4) by enhancing monitoring mechanisms, improving complaint

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<sup>32</sup> Tim Lindsey, '3. Minorities and Discrimination in Indonesia: The Legal Framework', in *Contentious Belonging* (ISEAS Publishing, 2019), 36–54, <https://doi.org/10.1355/9789814843478-007>.

<sup>33</sup> Desi Hanara, 'Mainstreaming Human Rights in the Asian Judiciary', *Constitutional Review* 4, no. 1 (31 May 2018): 77, <https://doi.org/10.31078/consrev414>.

systems, and ensuring accessible legal remedies for victims of discrimination in educational institutions.

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