

## CHAPTER FOUR

### FINDING AND ANALYSIS

#### A. Academic Freedom: From the Ancient Greek Civilization to the End of World War II

The pioneer of academic freedom is believed to occur at time of the Trial of Socrates. It was pioneered by the principle to seek and to reveal the truth to the public during Socrates' life and after his death by Plato.<sup>1</sup> Through the centuries, Frederick I Barbarossa established *Authentica Habita* as the source of legal protection for scholars in 1155 AD, where roads were unsafe, and dangers were everywhere threatening everyone.<sup>2</sup> Nearly eight centuries later, during the World War II, Franklin Delano Roosevelt<sup>3</sup> introduced Four Freedoms in 1941 namely Freedom of Speech, Freedom of Religion, Freedom from Fear, and Freedom from Want<sup>4</sup> which was declared as the Universal Declaration of Human Rights by the UN in 1948. From the Declaration, bore many legislations in respect with freedom of academic and its enforcement through decades.<sup>5</sup>

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<sup>1</sup> Waterfield, Robin, 2009, *Why Socrates Died: Dispelling the Myths*, New York, W. W. Norton and Company, p. 14

<sup>2</sup> Moraw, Peter, *Op.Cit.*

<sup>3</sup> Franklin Delano Roosevelt served as the 32<sup>nd</sup> President of the United States of America from 1933 until his death in 1945. He was a statesman and political leader of Democrat Party.

<sup>4</sup> These Four Freedoms were introduced by Franklin Delano Roosevelt on his speech at the 1941 State of the Union Address "The Four Freedoms" in 6<sup>th</sup> of January 1941. See further his speech text at <http://voicesofdemocracy.umd.edu/fdr-the-four-freedoms-speech-text/>, accessed on 24<sup>th</sup> of December 2018 at 12:15 am

<sup>5</sup> Hannum, Hurst, "The Universal Declaration of Human Rights in National and International Law", *Health and Human Rights*, Volume 3(2), 1998, Boston, Harvard University Press, p. 145

## 1. Academic Freedom in the Classical Civilization

There are many theories from scholars in determining the period of Classical Civilization or Classical Antiquity. Majority theories approximated the beginning of the Classical Civilization roughly with the earliest-recorded Greek Poetry of Homer<sup>6</sup> during eighth to seventh centuries BC until the rise of Christianity and the fall of the Western Roman Empire in fifth century AD.<sup>7</sup> This classical age was a period of war and conflict between the Greeks and the Persians, then continued by the Athenians and the Spartans. However, it was also the period of unprecedented political and cultural conquest.<sup>8</sup>

Speaking of academic freedom, the first noteworthy ancient history of it in western perspective occurred in 399 BC when Socrates, a great philosopher, was tried and executed to death by Athenians after spurious charges of his teaching's impiety and corruption.<sup>9</sup> Years later, his student, Plato, published an essay which purported to be Socrates' speech. Through

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<sup>6</sup> Roman bust of Homer was the legendary author of two epic poems that were the ancient Greek literature central work, namely Iliad and the Odyssey. The Iliad was set during the Trojan War, a very famous war in Troy city which was sieged for 10 years by Greek kingdoms coalition. The Odyssey focused on the journey of Odysseus at around 20 years after the fall of Troy. Many of his accounts circulated in classical age. Wilson, Nigel Guy, 2013, *Encyclopedia of Ancient Greece*, Hoboken, Taylor and Francis, p. 366

<sup>7</sup> The beginning of the Classical Civilization of Western was believed to by the interlocking of Ancient Greece and Ancient Rome which known as the Greco-Roman World. It is the period when Greeks and Romans gave huge influence throughout Europe, North Africa and Western Asia. See further at Anonymous, 2017, *Classic Age*, New World Encyclopedia, [http://www.newworldencyclopedia.org/entry/Classic\\_Age#cite\\_ref-0](http://www.newworldencyclopedia.org/entry/Classic_Age#cite_ref-0), accessed on 3<sup>rd</sup> of January 2019 at 3:30 pm

<sup>8</sup> Anonymous, 2018, *Classical Greece*, History.com, <https://www.history.com/topics/ancient-history/classical-greece>, accessed on 3<sup>rd</sup> of January 2019 at 3:35 pm

<sup>9</sup> Steward., Doug, "Taking Liberties: Academic Freedom and Humanities", *Profession*, 2008, New York, Modern Language Association, p. 146

Plato's *Apology*,<sup>10</sup> Socrates has won the people's heart. In histories of western philosophy, the execution of Socrates is represented as judicial murder where the Athenians attempted to stifle their conscience voice by terminating the cleverest and noblest.<sup>11</sup>

**Figure 1. The Trial of Socrates in 399 BC**



Source: [https://en.wikipedia.org/wiki/The\\_Death\\_of\\_Socrates](https://en.wikipedia.org/wiki/The_Death_of_Socrates)

Socrates, during his lifetime, was trying to waken up the Athenians' moral and intellectual complacencies. The impact of his effort was creating his own enemies against the most powerful men in the city.<sup>12</sup> He lived during the transition time from the height of the Athenian hegemony to its

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<sup>10</sup> This is a Socratic dialogue that presents the speech of Socrates legal self-defense when Socrates was charged for his impiety and corruption case in 399 BC. Specifically, The *Apology of Socrates* subjects to his defense against the charges of corruption of youth scandalized his fellow citizens and not believing in the gods in whom the Athenians believe. See further at Stanford Encyclopedia of Philosophy, 2005, *Socrates*, <https://plato.stanford.edu/entries/socrates/>, accessed on 23<sup>rd</sup> of December 2018 at 7:15 pm

<sup>11</sup> Hansen, Mogens Herman, 1995, *The Trial of Sokrates – from the Athenian Point of View*, Copenhagen, The Royal Danish Academic of Science and Letters, p. 3

<sup>12</sup> Crabtree, David, 2003, *Academic Freedom and Fundamentalism*, <http://msc.gutenberg.edu/2003/09/academic-freedom/>, accessed on 23<sup>rd</sup> of December 2018 at 7:30 pm

fall defeated by Sparta<sup>13</sup> and its allies in the Peloponnesian War.<sup>14</sup> At a time when Athens recovered their nation from its defeat, the Athenians was in doubt about the effectiveness of democracy as the form of governance. There Socrates came up and criticized the government until he was charged to a trial as an expression of political infighting.<sup>15</sup> According to Robin Waterfield,<sup>16</sup> Socrates was a voluntarily scapegoat. Waterfield further said that Socrates' death was to purify the Athens' misfortunes.

After Socrates' death, one of his students, Plato, established the Academy, a school from which the Academy term was founded.<sup>17</sup> The Academy, where Aristotle studied during 384 – 322 BC, was founded by Plato as a skeptical school to keep the tradition of Socrates.<sup>18</sup> It was not a state institution and was not founded to serve the society, though it gave benefit to it. The main purpose of establishing Academy by Plato was to pursuit the truth. Overwhelmed by the experience of the Trial of Socrates, Plato was eager to build the Academy free from any interferences in its fulfillment of the purpose. Thus, academic freedom was rooted in the belief of the pursuing the truth.<sup>19</sup>

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<sup>13</sup> Sparta was the main enemy of Athens during the Peloponnesian War between 431 and 404 B.C. from which it emerged triumphant, though it cost a lot of lives. Cartledge, Paul Anthony, 2002, *Sparta and Lakonia: A Regional History 1300 to 362 BC*, Oxford, Routledge, p. 192

<sup>14</sup> This was a war between Athens of Delian League against the Sparta of Peloponnesian League concluded in 431 – 404 BC with the signing of the Peace of Nicias. This treaty, however, was soon undermined by renewed fighting in the Peloponnese. The Athens entire force was destructed in 413 BC after the failure of an attack on Syracuse, Sicily. Holladay, A. J., "Sparta and the First Peloponnesian War", *The Journal of Hellenic Studies*, Volume 105, 1985, p. 161

<sup>15</sup> Wilson, Emily R., 2007, *The Death of Socrates*, Cambridge, Harvard University Press, p. 55

<sup>16</sup> Waterfield, Robin, *Op.Cit.*

<sup>17</sup> Crabtree, David, *Op.Cit.*

<sup>18</sup> Lindberg, David C., 2007, *The Beginnings of Western Science*, Chicago, University of Chicago Press, p. 70

<sup>19</sup> Crabtree, David, *Op.Cit.*

Shortly after the death of Plato, Aristotle became the tutor of Alexander the Great as requested by Philip II of Macedon in the beginning of 343 BC. Teaching Alexander gave him many benefits such establishing a library in Lyceum which had helped him to produce many books in papyrus scroll. The fact that he was the student of Plato could not make him free from Platonism<sup>20</sup> teachings, however, he immersed in empirical studies and shifted to Empiricism<sup>21</sup> from Platonism.<sup>22</sup>

Near the end of his life, Alexander and Aristotle became estranged by Persians. He was suspected of playing the death of Alexander, however, the evidence was unlikely a claim that have been made six years after the death.<sup>23</sup> Later in 322 BC, following the Alexander's death, Aristotle was denounced for impiety by Eurymedon the Hierophant, a representative of the priestly clan overseeing the Eleusinian Mysteries, making him left to Chalcis, on Euboea, in his mother's family until his death.<sup>24</sup> Aristotle said in this occasion that "I will not allow the Athenians to sin twice against philosophy".<sup>25</sup>

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<sup>20</sup> Platonism is basically a philosophical teaching that derives its main inspiration from Plato. Though there are many unwritten Plato's doctrines, however, Platonism referred the findings primarily on a reading of Plato's dialogues. See further at Armstrong, A. Hilary and Henry J. Blumenthal, 2017, *Platonism*, Encyclopedia Britannica, <https://www.britannica.com/topic/Platonism>, accessed on 23<sup>rd</sup> of December at 8:15 pm

<sup>21</sup> Empiricism in philosophy is the view that originated from experience, that all concepts are about or applicable to things that can be experienced, or that all belief that rationally acceptable or justifiable proportionally or knowable through experience. See further at Duignan, Brian, et. al., 2016, *Empiricism*, <https://www.britannica.com/topic/empiricism>, accessed on 23<sup>rd</sup> of December 2018 at 8:16 pm

<sup>22</sup> Barnes, Jonathan, 1995, *The Cambridge Companion to Aristotle*, Cambridge, Cambridge University Press, p. 16

<sup>23</sup> Green, Peter, 1991, *Alexander of Macedon*, California, University of California Press, p. 460

<sup>24</sup> Filonik, Jakub, "Athenian Impiety Trials: A Reappraisal", *Dike*, Volume 16, 2013, Milan, Università degli Studi di Milano, p. 72

<sup>25</sup> Jones, W. T., 1980, *The Classical Mind: A History of Western Philosophy*, California, Harcourt Brace Jovanovich College Publisher, p. 216

The issue of academic freedom continued until the turning period of Before Christ to Anno Domini. According to Pearl Kibre,<sup>26</sup> the development of academic freedom before the second century known by scholarly privileges, can be traced back to some specific provisions in the body of Roman Law. Scholar concept during that time were whom particularly liberal arts master, grammar and rhetoric, physicians who were concerned with the healing of the sick, bestowed with special privileges and immunities given by Roman state in the imperial legislation.<sup>27</sup> The professors of liberal arts, grammarians, orators, medical men, and philosopher were exempted from compulsory civic duties and were granted immunity for military service under the rule of Vespasian<sup>28</sup> and Hadrian<sup>29</sup> emperors. In the rule of Vespasian, he gave public salary with their privileges and immunities to those who taught rhetoric or oratory.<sup>30</sup>

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<sup>26</sup> Kibre, Pearl, "Scholarly Privileges: Their Roman Origins and Medieval Expression", *The American Historical Review*, Volume 59(3), 1954, Oxford, Oxford University Press, p. 543 – 544

<sup>27</sup> Kibre, *Ibid.*

<sup>28</sup> Titus Flavius Vespasianus or Vespasian was the fourth and the last Roman emperor from 69 – 79 in the Year of the Four Emperors. He was the first emperor who came from an equestrian family, the second property-based classes of ancient Rome that rank below the senatorial class and rose into the senatorial rank as the first one in his family. See further at Levick, Barbara M., 1999, *Vespasian (Roman Imperial Biographies)*, Oxford, Routledge, p. 16

<sup>29</sup> Born Publius Aelius Hadrianus or Hadrian in Italica, he was well-known as third of the Five Good Emperors (Nerva, Trajan, Hadrian, Antonius Pius, and Marcus Aurelius) who ruled justly. Rulling from 117 to 138, Hadrian was also known for his substantial projects in Roman Empire, especially, Wall of Hadrian in northern Britain. See further at Mark, Joshua J., 2009, *Hadrian*, Ancient History Encyclopedia, <https://www.ancient.eu/hadrian/>, accessed on 25<sup>th</sup> of December 2018 at 9:15 am

<sup>30</sup> In the Digest, L, IV, 18 and Digest, L, V, 8, 4 stated that those who taught primary letters to children were not given immunity from compulsory civic duties. See further at Kibre, *Op.Cit.*

**Figure 2. Map of the Roman Empire Territory at its Greatest Extent in 117**



Source: <https://www.ancient.eu/image/266/roman-empire-in-117-ce/>

Other privileges were given to the scholars in the period of Roman Emperor Commodus,<sup>31</sup> son of Roman Emperor Marcus Aurelius the philosopher. Under the rule, he created some provisions of exemption of scholars from regulations pertaining the purchase of stuffs such wheat, wine, and oil. On the top of that, Emperor Commodus gave also them exemption from the requirements that accorded the hospitality to foreign guests, from the obligation to serve as jurors or legates, and from the compulsory to serve in the militia or any other compulsory public service.<sup>32</sup>

<sup>31</sup> Lucius Aurelius Commodus was a Roman Emperor ruling from 180 to 192 AD. He took the throne after the death of his father Marcus Aurelius and marked the end of long reign of five good emperors followed by the end of *Pax Romana* (The Roman Peace), a long peaceful and sable period experienced by Roman Empire. See further at Wasson, Donald L., 2013, *Commodus*, Ancient History Encyclopaedia, <https://www.ancient.eu/commodus/>, accessed on 3<sup>rd</sup> of January 2019 at 4:25 pm

<sup>32</sup> Kibre, Pearl, *Ibid*, p. 544

The next period of Roman Empire under the rule of Constantine the Great,<sup>33</sup> the privileges were extended. Constantine respected the medicine men,<sup>34</sup> especially those who were esteemed as the head among the physicians, the grammarians, and other professors of literature and legal experts, together with their families and properties that they have possessed inside the nations, immune to all civic and public compulsories. One thing should be noted in the period of Constantine the Great, under his rule: he ordered the scholars to be protected against being summoned into the trial and from suffering any indignities or injuries. Since then, anyone who violated the provisions shall pay a heavy fine and its fine would be handed over to the scholars as the payment for the injuries.<sup>35</sup>

The privileges for the scholars were continued by other emperors in the fourth and early fifth century, particularly by Roman Emperor Honorius and Roman Emperor Theodosius II. These privileges were to ensure the freedom for scholars to do the liberal studies.<sup>36</sup> In the sixth century, under the rule of Roman Emperor Justinian, scholars were given the privileges

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<sup>33</sup> Flavius Aurelius Constantinus Augustus also known as Constantine I or Constantine the Great was a Roman Emperor ruling from 309 to 337 AD and the first who profess Christianity. He reformed the empire into Christian state and provided his thoughts on Christian culture for the growth of Byzantine and Western medieval culture. See further at Matthews, J. F. and Donald MacGillivray Nicol, 2016, *Constantine I*, Encyclopedia Britannica, <https://www.britannica.com/biography/Constantine-I-Roman-emperor>, accessed on 3<sup>rd</sup> of January 2019 at 4:35 pm

<sup>34</sup> Medicine man or healer are those who knowledgeable on the magical and chemical potencies of substances for healing purpose. Traditionally, the medicine man was in charge to prevent or to heal the physical and mental illness of people. See further at Anonymous, 1998, *Medicine Man*, Encyclopedia Britannica, <https://www.britannica.com/topic/medicine-man>, accessed on 3<sup>rd</sup> of January 2019 at 4:40 pm

<sup>35</sup> These privileges were given by the Codex and Digest in the third century. Kibre, *Ibid*, p. 544

<sup>36</sup> Kibre, *Ibid*, p. 545



under the customary grants of Roman Law or *Corpus Juris Civilis*.<sup>37</sup> The rule renewed the practice of paying salaries to the grammarians, orators, physicians and lawyers as to make the scholars more devote in learning and teaching and to guarantee the young learners of liberal arts would flourish in public affairs.<sup>38</sup> It also marked the end of academic freedom development in classical civilization and opened the new era.

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<sup>37</sup> Historically, *Corpus Juris Civilis* or Code of Justinian was a Byzantine law major reform made by Roman Emperor Justinian I in 527 – 565 to clarify and to update the old Roman laws, to eradicate the inconsistencies, to speed up the legal processes, and to collect all imperial edicts and expert opinions pertaining punishment for specific crimes to marriage and property inheritance. This *Corpus Juris Civilis* was not only used as the legal basis for Byzantine law for over 900 years, but also influence many western legal systems to this day. See further at Cartwright, Mark, 2018, *Corpus Juris Civilis*, Ancient History Encyclopedia, [https://www.ancient.eu/Corpus\\_Juris\\_Civilis/](https://www.ancient.eu/Corpus_Juris_Civilis/), accessed on 25<sup>th</sup> of December 2018 at 8:15 pm

<sup>38</sup> Kibre, *Op.Cit.*

## 2. Academic Freedom in the Medieval Ages

The issuance of *Corpus Juris Civilis* from 529 to 565 AD by Eastern Roman Emperor Justinian I marked the new era of academic freedom development in the western world. It was a modern collection of all fundamental works in Roman jurisprudence. The work marked the beginning of the modern time of academic freedom development in the western world. It was such an integral part of the old Roman law to modern Roman law as the previous law had been in ruling for over 1,000 years.<sup>39</sup> The result was more comprehensive and systematic than any previous documents<sup>40</sup>. In this code, the protection of scholars was reasserted and emphasized whenever and wherever the Roman traditions were.<sup>41</sup>

Since the early 6<sup>th</sup> century AD, the scholars have enjoyed the sympathy even for the Roman Empire enemy. It came from the principle where they were respected in Italy of Ostrogothic Kingdom<sup>42</sup> who were under the tutelage of Roman Empire and encouraged the principle of keeping alive and active “The Wisdom and Grace of Roman Learning”.<sup>43</sup>

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<sup>39</sup> Kibre, *Op.Cit.*

<sup>40</sup> Anonymous, 2000, *Corpus Juris Civilis*, The Columbia Encyclopedia 6<sup>th</sup> Edition, <https://www.encyclopedia.com/social-sciences-and-law/law/law-divisions-and-codes/corpus-juris-civilis>, accessed on 25<sup>th</sup> of December 2018 at 9:45 pm

<sup>41</sup> Kibre, *Op.Cit.*

<sup>42</sup> Kingdom of the Ostrogoths, officially Kingdom of Italy, was a kingdom that gave major influence on the fall of Western Roman Empire. The kingdom which was established and ruled from 493 to 553 led by Theoderic the Great after killing Roman Emperor Flavius Odoacer and marked the end of Western Roman Empire. Besides of the war with Roman Emperor, commonly known as the Gothic War, Ostrogoths Empire respected and kept the Roman scholars alive. See further at Waldman, Carl and Catherine Madison, 2006, *Encyclopedia of European Peoples*, New York, Facts on File, p. 575

<sup>43</sup> Kibre, *Op.Cit.*

Under the rule of the Great Theodoric,<sup>44</sup> his successor Athalaric,<sup>45</sup> and with some influences from their Roman secretary, Cassiodorus,<sup>46</sup> was in favor to those who engaged in liberal arts study and teaching.<sup>47</sup> Later, Athalaric through the Cassiodorus' pen written his concern to professor whom were not receiving adequate rewards for their contributions. He wanted the making of provisions for them to get increase of emoluments and cares of how to live tolerably and how to teach freely of liberal arts.<sup>48</sup>

In early 9<sup>th</sup> century AD, Roman Emperor Charlemagne<sup>49</sup> revived the Roman imperial title in the west and declared themselves to be successor of the previous emperors including Constantine, and Justinian. After the revival, he emphasized that the Empire placed upon studies of Roman

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<sup>44</sup> Flavius Theodoricus was a king of the Ostrogoths ruling from 454 to 526 AD who launched the invasion to Italy in 488 and completed to occupy the entire Italian peninsula and Sicily in 493, then making himself to take the throne as the king of Italy ruling from 493 to 526 AD with Ravenna as the capital. See further at Thompson, E. A., 1998, *Theodoric*, Encyclopedia Britannica, <https://www.britannica.com/biography/Theodoric-king-of-Italy>, accessed on 3<sup>rd</sup> of January 2019 at 4:55 pm

<sup>45</sup> Athalaric was the king of Ostrogoths between 526 to 534. He was the grandchild of the Theodoric son of Eutharic and Amalasantha of the youngest daughter of Theodoric. See further at Chisholm, Hugh, 1911, *Athalaric*, Encyclopedia Britannica Volume 2, Cambridge, Cambridge University Press, p. 825

<sup>46</sup> Flavius Magnus Aurelius Cassiodorus was a historian, statesman, and monk who saved the Rome culture at a time of barbarism in the Roman Empire. See further at Anonymous, 1998, *Cassiodorus*, Encyclopedia Britannica, <https://www.britannica.com/biography/Cassiodorus>., accessed on 3<sup>rd</sup> of January 2019 at 5:13 pm

<sup>47</sup> Anonymous, *The Variae of Cassiodorus*, Encyclopedia Romana, [http://penelope.uchicago.edu/~grout/encyclopaedia\\_Romana/circusmaximus/justinian.html](http://penelope.uchicago.edu/~grout/encyclopaedia_Romana/circusmaximus/justinian.html), accessed on 2<sup>nd</sup> of January 2019 at 9:12 am

<sup>48</sup> *Ibid.*

<sup>49</sup> Charlemagne or Charles the Great was a Medieval Roman Emperor who ruled Western Europe from 768 to 814. He was a king of Franks, a tribe of Germanic as today known by Belgium, France, Luxembourg, the Netherlands, and Western Germany, that united all Germanic peoples into one kingdom of Christianity. When he died in 814, his legacy left the guarantee of the survival of Christianity in the West that today have made him known as the Father of Europe. See further at Anonymous, 2018, *Charlemagne*, History.com, <https://www.history.com/topics/middle-ages/charlemagne>, accessed on 2<sup>nd</sup> of January 2019 at 6:50 am

institutions and culture was reflected in the Teutonic Order<sup>50</sup> to do honor to the scholars.<sup>51</sup> Literally, Charlemagne wanted them to be highly honored.<sup>52</sup>

In the late 11<sup>th</sup> century AD, the first university in the Western world was established in 1088. It was University of Bologna (Italian: *Università di Bologna*, UNIBO) in Bologna, Italy, as the pioneer of what we call “University” today. It was the result of the devotion of master of grammar, rhetoric, and logic to law.<sup>53</sup> Between the 11<sup>th</sup> and 12<sup>th</sup> centuries AD, there had been a controversy of European politics development in defining the relationship between the State and the Church. The ruling Roman Emperor at that time, Frederick I Barbarossa, gathered four law experts, known as Four Doctors<sup>54</sup> (Latin: *Quatuor Doctores*) namely: Bulgarus, Jacobus de Boragine, Martinus Gosia, and Hugo de Porta Ravennate<sup>55</sup> and the founder of legal scholarship in Bologna, Irnerius<sup>56</sup> to express their opinions

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<sup>50</sup> Teutonic Order (The Order of Brothers of the German House of Saint Mary in Jerusalem) is a Catholic military order founded in 1190 at Acre, Kingdom of Jerusalem. The knights of Teutonic were in charge to help Christians, including the Christian scholars with priority, during their pilgrimage in Holy Land and to establish hospitals.

<sup>51</sup> Koepler, Hans, “Frederick Barbarossa and the Schools of Bologna”, *The English Historical Review*, Volume 54, 1939, Oxford, Oxford University Press, p. 581

<sup>52</sup> Kibre, *Op.Cit*, p. 546

<sup>53</sup> University of Bologna, *The University from the 12<sup>th</sup> to the 20<sup>th</sup> Century*, Almamater Studiorum Università di Bologna, <https://www.unibo.it/en/university/who-we-are/our-history/university-from-12th-to-20th-century>, accessed on 26<sup>th</sup> of December 2018 at 9:15 am

<sup>54</sup> The Four Doctors of Bologna were Italian jurists and glossators in the 12<sup>th</sup> century based in the University of Bologna. The four doctors were teacher in the Bologna School of Law which based on glosses and commentaries on the rediscovered *Corpus Juris Civilis* or Code of Justinian. See further at Wessels, Johannes Wilhelmus and Michael H. Hoeflich, 1908, *History of the Roman-Dutch Law*, South Africa, Africa Book Co., p. 115

<sup>55</sup> Wessels, Johannes Wilhelmus and Michael H. Hoeflich, *Ibid*.

<sup>56</sup> Irnerius, also spelled Guarnerius or Warnerius, was an Italian scholar during the year 1050 – 1125 who revived Roman legal studies in Italy and noted legal glossators. He was the teacher of the famous Bulgarus, the most prominent of Bolognese glossator in the second generation. See further at Anonymous, 2001, *Irnerius: Italian Legal Scholar*, Encyclopedia Britannica, <https://www.britannica.com/biography/Irnerius>, accessed on 26<sup>th</sup> of December 2018 at 9:45 am

pertaining the controversy at the Diet of Roncaglia, a Roman Empire general assembly of the nobles and ecclesiasts. Except for Martinus Gosia, the others declared themselves in favour with the Empire.

**Figure 3. The Logo of University of Bologna**



Source: [https://en.wikipedia.org/wiki/University\\_of\\_Bologna](https://en.wikipedia.org/wiki/University_of_Bologna)

The result of the meeting was the promulgation of *Authentica Habita* or *Constitution Habita* or *Privilegium Scholasticum* by the Roman Emperor Frederick I Barbarossa consequently. This provision was establishing a “*Societas di Socii*” or group of students overseen by a “*Dominus*” or master remunerated by the sums paid to him by the students. By the time of the declaration, the University was legally declared as an independent place to do research and the Roman Empire undertook the role to protect scholars

during their travel for the purpose of study from any political authorities' interference.<sup>57</sup>

The need for such pacts to protect the scholars on travelling was particularly acute. Not only the scholars that were in danger and insecurity at that times, but also the emperor and his servants themselves. That is why *Authentica Habita* was made. It is the first important grant of privileges in the medieval ages intending primarily to provide legal protection for students and professor of both canon and civil law.<sup>58</sup> In the *Habita*, Barbarossa granted imperial protections for all who traveled or stayed inside imperial territories for study purposes. Differently for scholars, Barbarossa gave special privilege of protection for them “since the whole world is illuminated by their learning”. He did so as a reward to the Bolognese teachers of Roman Law whom have supported the empire.<sup>59</sup>

In the *Habita*, Barbarossa also bespoke his compassion for “those who exile themselves through love of learning, those who prefer to wear themselves out in poverty rather than to enjoy riches, and those who expose their lives to every peril, so that, defenseless, they must often suffer bodily injury from the vilest of men”.<sup>60</sup> This was strengthened by regulating those who injured or violated scholars must pay the fine for the damages and

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<sup>57</sup> University of Bologna, *Op.Cit.*

<sup>58</sup> Kibre, *Op.Cit*, p. 549

<sup>59</sup> Sheedy, Anna T., 1942, *Bartolus on Social Condition in the Fourteenth Century*, New York, Columbia University Press, p. 129. As Koeppler points out (p.586), Imerius gave huge contribution to the empire ruled by Henry V followed by other Bolognese professors namely Bulgar, Martin Gosia, Hugo, and Iacopo della Porta of Ravenna who helped Frederick Barbarossa period in settling suits and in hearing complaints.

<sup>60</sup> Koeppler, *Op.Cit*, p. 607

losses they have done to the scholars. The money did not go for the empire but scholars' possession.

Another privilege for scholars under *Authentica Habita* was the right of exclusive judicial jurisdiction. It is when scholars committed offenses against local law, they have right to decline the ordinary local jurisdiction and to choose the judge that will try them either the teachers or the bishops of the Church. The privilege that probably derived from Justinian gave further one at when people sue a scholar before another judge, regardless of how good the claim, would lose the case.<sup>61</sup> In short, *Authentica Habita* provided basic scholarly privileges namely protection and safe conduct, reprisals exemption, and the right of exclusive judicial jurisdictions. In the years ahead, *Authentica Habita* became the model for future grants privileges.

From 1189 to 1192 during the Third Crusade,<sup>62</sup> the UNIBO was in trouble since the death of its protector, Barbarossa. It survived the trouble, however, the government tried to control the University. In contrary with the matter, the students organized themselves into two groups based on their origins, namely: Citramontani of Italians, Lombards, Tuscans, Romans and Ultramontani of non-italians, French, Spanish, Catalans, Polish, German,

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<sup>61</sup> Rashdall, Hastings, 1936, *The Univesities of Europe in the Middle Ages*, New Edited by F. M. Powicke and A. B. Emden, London, Oxford University Press, p. 150

<sup>62</sup> The Third Crusade was the third trial of attack to retake Jerusalem back to Christianity after its fall to the Muslim leader of Saladin in 1187 AD. The Crusade was led by three European empires, namely: Frederick I Barbarossa of Germany and Roman Empire, Phillip II of French Monarch, and Richard I of England Kingdom. See further at Cartwright, Mark, 2018, *Third Crusade*, Ancient History Encyclopedia, [https://www.ancient.eu/Third\\_Crusade/](https://www.ancient.eu/Third_Crusade/), accessed on 3<sup>rd</sup> of January 6:15 pm

Hungarians. Even worse in 13<sup>th</sup> century AD, the University fought for its autonomy during difficulties and political disputes, while the political power tried to use it for their own benefits.<sup>63</sup>

As time passed by, the Church felt that it is important to compile another new law such *Corpus Juris Civilis* made by Roman Emperor Justinian centuries ago. It was all started in 1140, 47 years before the Third Crusade, the monk John Gratian which later known as Pope Gregory VI after his promotion on 1045 until his abdication, completed his *Concordia Discordantium Canonum* or *Gratian's Decretum* (Harmony of Contradictory Laws). The Decree is a collection of nearly 3,800 texts concerning all areas of church discipline and regulation, including the privileges for all church scholars. It was, later, become the basic text on masters of Canon Law lecture in Universities.<sup>64</sup>

The making of the laws was continued until the end of the Medieval Ages. During the process, there were another five of compilations included within later known as *Corpus Juris Canonici*<sup>65</sup> in 1580. All six compilations are the *Gratian's Decretum* of Pope Gregory VI written between 1141 and 1150, the *Decretals* of Pope Gregory IX written in 1234, the *Liber Sextus*

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<sup>63</sup> University of Bologna, *Ibid.*

<sup>64</sup> Huizing, Peter J., and Ladislav M. Orsy, 1998, *Canon Law*, Encyclopedia Britannica, <https://www.britannica.com/topic/canon-law#ref216891>, accessed on 4<sup>th</sup> of January 2019 at 1:28 pm

<sup>65</sup> *Corpus Juris Canonici* or Corpus of Canon Law was a compilation of six Roman Catholic Church laws that regulated the ecclesiastical legislation from the Middle Ages until it was replaced by the 1917 Code of Canon Law. This law had been regulating the Church for over 750 years. Anonymous, 2008, *Corpus Juris Canonici*, Encyclopedia Britannica, <https://www.britannica.com/topic/Corpus-Juris-Canonici>, accessed on 25<sup>th</sup> of December 2018 at 11:15 pm



of Pope Boniface VIII written in 1298, the *Clementinae* of Pope Clement V written in 1317, and two private collections of Pope John XXII namely the *Extravagantes* written in 1325 and the *Extravagantes Communes*.<sup>66</sup>

As like Roman Law, the Canon Law of Church also gave special privileges to scholars. The privileges were, somehow, like the ones that have been given by the Roman law, namely the immunities to the public obligations and freedom from military levies.<sup>67</sup> For those scholars who were also cleric, under the *Corpus Juris Canonici*, they enjoyed the clerical rights, that they would not be tried or disciplined under the local or feudal courts but ecclesiastical superiors and its courts.<sup>68</sup> The name of *Corpus Juris Canonici* was given by Pope Gregory XIII in the *Cum Pro Munere*.<sup>69</sup>

In England, a very important event took place in the early 13<sup>th</sup> century. *Magna Carta Libertatum* or *Magna Carta* (Medieval Latin for “the Great Charter of the Liberties) was a document of unsuccessful attempt to create peace among the England people (the Royal Family and the Rebel Factions of Baron) in 1215. The King John<sup>70</sup> of the Kingdom was forced to

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<sup>66</sup> *Ibid.*

<sup>67</sup> Kibre, *Op.Cit.*, p. 547-548

<sup>68</sup> See further at *Corpus Juris Canonici* 2<sup>nd</sup> Edition in *Decretum Magistri Gratiani* and *Decretalium Collectiones* on Learning and the Clergy. Edited by Emil Ludwid Richter and Emil Albert Friedberd. (1879 – 1881).

<sup>69</sup> *Cum Pro Munere* is a document which was issued by Pope Gregory XIII on 1<sup>st</sup> of July 1580. The document was approved and officially concentrated the traditional work of the *Corpus Juris Canonici*. See further at Anonymous, *Cum Pro Munere*, Simone, <https://www.simone.it/newdiz/?action=view&id=355&dizionario=2>, accessed on 25<sup>th</sup> of December 2018 at 11:19 pm

<sup>70</sup> King John or John Lackland was a King of England ruling from 1199 until his death in 1216. John was a controversy King along the Kingdom of England history as he was shamefully defeated by King Philip II of France and lost the Duchy of Normandy and most of his lands in France. Besides, a great oppression was taking a place during his reign as he was presumed as the bad king to his people. See further at Turner, Ralph V., 2009, *King John: England's Evil King?* Stroud, History Press, p. 23

sign the Charter as he was presumed a bad king to his people. The Barons, a group of England rebel faction, led the event to force him to do so as it was motivated by the bad deeds King John had done to the people.

At that time, the Kingdom ruled using the principle of *Vis Et Voluntas* (English: Force and Will), taking something with arbitrary decisions even justified that the King was above the law.<sup>71</sup> After the death of King John in 1216, *Magna Carta* was reissued in 1216 and 1217 with some of its controversial clauses deleted. Following to the year of 1225 when *Magna Carta* was reissued again and became the final version of it declares the sovereignty of the Kingdom subject to the Rule of Law.<sup>72</sup> The *Magna Carta* remained peaceful until the 17<sup>th</sup> century when this Charter was brought to the world of exploration and implemented in new places. It later became the reference of many oppression events to fight for justice. Finally, the issuance of *Corpus Juris Canonici* and *Magna Carta Universitatum* marked the end of the Medieval Ages and the beginning of Modern Period or age of discovery.<sup>73</sup>

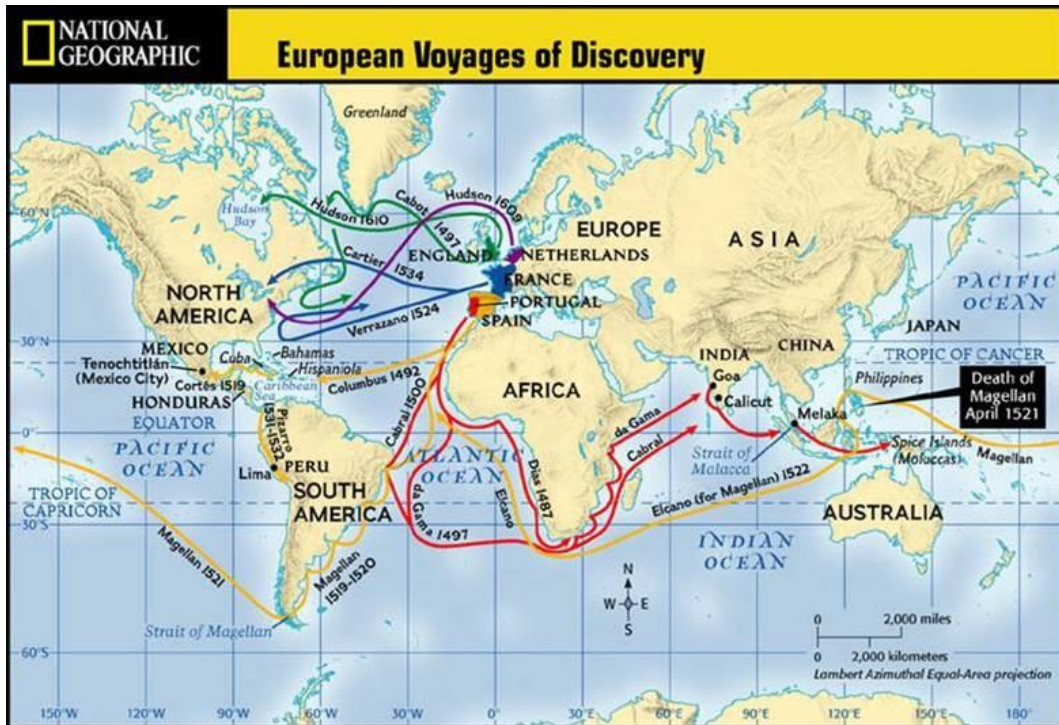
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<sup>71</sup> Turner. *Ibid*, p. 149

<sup>72</sup> Helmholtz, R. H., "The Church and Magna Charta". *William & Marry Bill of Rights Journal*, Volume 25(2), 2016, p. 425

<sup>73</sup> It is believed that the end of the Medieval Ages marked by the beginning of the discovery age or globalizing world. The Fall of Constantinople in 1453, Renaissance Period in between the 14<sup>th</sup> and 17<sup>th</sup>, Voyage of the Christopher Columbus, and Vasco de Gama's discovery are some of many marks of the transiting point from Late Medieval Ages to the Early Modern Period. It was known as the age of exploration to discover the world. See further at Vries, Jan De, "The Limits of the Globalization in the Early Modern World". *Economic History Review*, Volume 63(3), 2010, New Jersey, Wiley, p. 710-733

Figure 4. European Voyages of Discovery Map



Source: <https://www.thinglink.com/scene/705459658931830785>

### 3. Academic Freedom in the Modern Period

The modern period of academic freedom occurred during the age of discovery until present. Within the 100 years from the mid-15<sup>th</sup> to the mid-16<sup>th</sup> century, many Europeans tried to explore and to seek new routes to other regions. It gave the explorers chance to learn new knowledges in the destinations such Africa and America and brought it back to Europe.<sup>74</sup> The beginning of modern Academic Freedom may be traced upon the founding of the Leiden University in the Netherlands in 1575. Leiden received less restrictions of a religious and political restraints upon the scholars and students.<sup>75</sup> Subsequently, it was followed by the development of culture and education in European continent, especially in Italy, between the mid-14<sup>th</sup> and the late-16<sup>th</sup> centuries which is known as Renaissance.<sup>76</sup>

In the Renaissance climate, there were many subjects involved in the development such ethical, doctrinal, literary, artistic, scientific and technology. Besides, Humanism was also emerged to the activity of cultural and educational reform in grammatical, rhetorical, historical, poetry, and moral philosophy fields. In the mid-16<sup>th</sup> century, the Italian Renaissance

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<sup>74</sup> The impact of the exploration age was not only about learning new knowledges, but also massive wealth in trading; improvisation in methods of navigation and mapping; exchange of foods, plants, and animals; and the negative impact such colonialization by the Europeans. See further at Briney, Amanda, 2018, *A Brief History of the Age of Exploration*, ThoughtCo, <https://www.thoughtco.com/age-of-exploration-1435006>, accessed on 5<sup>th</sup> of January 2019 at 10:29 am

<sup>75</sup> Brickman, William W., "Academic Freedom: Past and Present", *Journal of Thought*, Volume 3(3), 1968, Caddo Gap Press, p. 154

<sup>76</sup> Renaissance (French: Rebirth) is a period in European civilization transiting the Late Medieval Ages to the Early Modern Period. In this period, the European begun to develop their educational system. It also witnessed the age of exploration, where in this age knowledges were developed by bringing new ones from the destinations back to Europe to be learnt. See further at Monfasani, John, 2016, *Renaissance Humanism, From Middle Ages to Modern Times*, New York, Routledge, p. ii

began its decline. However, it produced paramount results in many aspects, namely: arts, technology and science, eventually inspiring the revolution to the science.<sup>77</sup>

Along the modern period of Renaissance passed by, there were many scholars begun to produce their thoughts and writings. Relating to academic freedom, besides the excellence of the development, there was a problem in between scholars and church. Martin Luther<sup>78</sup> pioneered the freedom of thought during that time by writing his thoughts on Ninety-five Theses or Disputation on the Power of Indulgences<sup>79</sup> in 1517. It was a rejection to the teaching of Indulgences by the Roman Catholic Church. In the Ninety-five Theses, he proposed an academic discussion of indulgences to discuss further and to know the efficacy of it. Luther voiced out that salvation and eternal life are not earned by good deeds but are given as gift from God's mercy and grace through Jesus Christ believers' faith. However, it resulted

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<sup>77</sup> Guarnieri, Massimo and Pietro del Negro, *The Italian Renaissance: Transition from Medieval to Early Modern Europe of the University System and Higher Learning*, Proceedings of 100<sup>th</sup> Jubilee of Wu Chien-Shiung, 2012, p. 1

<sup>78</sup> Martin Luther was a monk and scholar from Germany. He later became the Western most significant figure in history after he wrote a document named Ninety-five Theses attacking the Catholic Church for its corrupt practice of selling indulgences to the sinner. He pointed out two major beliefs, namely: the salvation may be given to human only if they have a faith to the God and not by their deeds in accordance to the Bible as the central religious authority and the campaign of Protestant Reformation. See further at Anonymous, 2009, *Martin Luther and the 95 Theses*, History.com, <https://www.history.com/topics/reformation/martin-luther-and-the-95-theses>, accessed on 5<sup>th</sup> of January 2019 at 12:52 pm

<sup>79</sup> Indulgence is a teaching of the Roman Catholic Church to reduce the amount of the sinner punishment after the death in the hereafter. The sinner will get a reduction of its punishment in the process of purification or commonly known as Purgatory. See further at Peters, Edward N., 2008, *A Modern Guide to Indulgences: Rediscovering this Often-Misinterpreted Teaching*, Chicago, Liturgy Training Publications, p. 13

in his excommunication<sup>80</sup> and condemnation as an outlaw by the Pope Leo X and Holy Roman Emperor Charles V at the Diet of Worms in 1521<sup>81</sup>.

The work that has been done by Martin Luther resulted to a change of religion course and cultural history in the West. The Catholic Church was divided, and the Protestantism emerged shaped by his ideas. Luther was not alone to fight the truth, he was accompanied by John Calvin<sup>82</sup> and Huldrych Zwingli<sup>83</sup> to reform the church and later founding the Protestantism, one of the three Christianity branches. From this case, it shows us the role of scholars to fight for the truth according to their educational backgrounds. After for centuries they have lived under the tyranny of priest and king combined. The Renaissance and Reformation movements teased the power of these two superpowers over men's mind<sup>84</sup>.

Besides the Protestant reformation, there was a counter given by the Roman Catholic as its effort to fight against the Protestants. It was

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<sup>80</sup> Excommunication is a medicinal type of punishment under the spiritual believe of Roman Catholic Church under the Canon Law that deprives the guilty of the sinner in the blessing of ecclesiastical community. This is regulated under the canon 1312 of the Code of Canon Law.

<sup>81</sup> Hillerbrand, Hans J., 1998, *Martin Luther*, Encyclopedia Britannica, <https://www.britannica.com/biography/Martin-Luther>, accessed on 5<sup>th</sup> of December 2019 at 12:21 pm

<sup>82</sup> John Calvin (French: Jean Cauvin) was a theologian and ecclesiastical statesman that leading the French Protestant Reformer as the result of Martin Luther ideas. He was the most important figure in the Protestant Reformation second generation. He later made *Institutio Christiane Religionis* (Institute of the Christian Religion) as his interpretation of Christianity. See further at Bouwsma, William J., 1998, *John Calvin*, Encyclopedia Britannica, <https://www.britannica.com/biography/John-Calvin>, accessed on 5<sup>th</sup> of January 2019 at 1:52 pm

<sup>83</sup> Meanwhile in Swiss, the Protestant Reformation led by Huldrych Zwingli, a famous religious leader. The Swiss reformation was the only reformer in 16<sup>th</sup> century that were not evolve into the church. Zwingli accepted the Scriptures supreme authority but applied it more comprehensive to all Christianity doctrines and practices. See further at Bromiley, Geoffrey W., 1998, *Huldrych Zwingli*, Encyclopedia Britannica, <https://www.britannica.com/biography/Huldrych-Zwingli>, accessed on 5<sup>th</sup> of January 2019 at 1:57 pm

<sup>84</sup> De Dijn, Annelien, "The Politics of Enlightenment: From Peter Gay to Jonathan Israel", *The Historical Journal*, Volume 55(3), 2012, Cambridge, Cambridge University Press, p. 785

commonly known as Counter Reformation, Catholic Reformation or Catholic Revival. This Counter-Reformation began shortly before the Ninety-Five Theses of Martin Luther issued in 1517, approximately the same period as the Protestant-Reformation.<sup>85</sup> They fought against the Protestant-Reformation and internal renewal of the church in the 16<sup>th</sup> and early 17<sup>th</sup> century.

After the first University in Europe established, University of Bologna, it was followed by existing of many universities throughout the continent and functioned under the papal authority.<sup>86</sup> These two reformations had affected the European universities in different ways. In Germany for example, many Catholic universities were taken over by the Protestant and became Protestant universities, besides, Protestant Reformists also founded the Protestant universities. On the other hand, the Roman Catholic universities tried their best to defend the traditional learning associated to the Catholic church from the Protestant resistance. These contemporary universities, both Protestant and Catholic, have made a new form of academic freedom.<sup>87</sup>

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<sup>85</sup> See further at Anonymous, 1998, *Counter-Reformation*, Encyclopedia Britannica, <https://www.britannica.com/event/Counter-Reformation>, accessed on 7<sup>th</sup> of January 2019 at 10:15 am

<sup>86</sup> Papal Authority or Papal Supremacy is the Roman Catholic church doctrine that Pope, as the Vicar of Christ and source of unity, holds full power over the whole Church, including the Roman Catholic universities. See further at Paragraph of 882 and 937 of the Catechism of the Catholic Church and Coppa, Frank J., 1998, *Papacy: Roman Catholicism*, Encyclopedia Britannica, <https://www.britannica.com/topic/papacy>, accessed on 7<sup>th</sup> of January 2019 at 11:30 am

<sup>87</sup> Axelrod, Paul, 2018, *Academic Freedom: Can History be Our Guide?* University Affairs, <https://www.universityaffairs.ca/features/feature-article/academic-freedom-can-history-guide/>, accessed on 7<sup>th</sup> of January 2019 at 10:27 am

By the 17<sup>th</sup> century, both Protestant and Catholic universities had deep debates over theology and philosophy to defending their religious doctrines. Meanwhile, the new learning in science had begun to spread-out all-over Europe but they remained resistant to it. Galileo for example, he was forced to recant his advocacy for heliocentric universe and arrested for the rest of his life by the Roman Catholic church. The Church gave conclusion to the Heliocentrism “foolish and absurd in philosophy, and formally heretical since it explicitly contradicts in many places the sense of Holy Scripture”.<sup>88</sup> However, in the Protestant teaching, it widens the acceptable religious inquiry parameters under the strict theological limits on academic teaching and writing.<sup>89</sup>

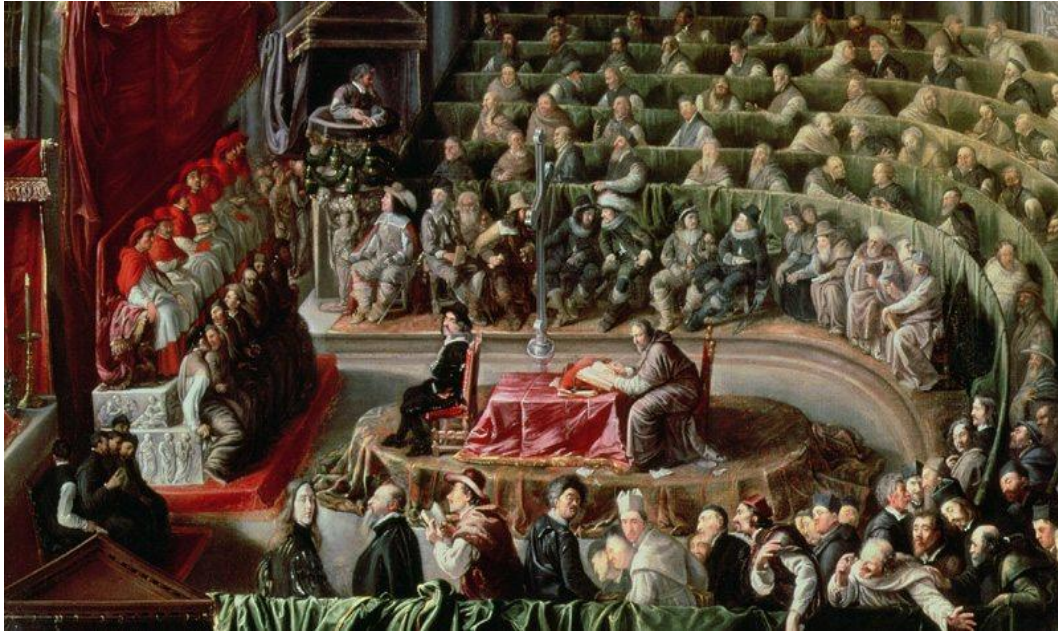
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<sup>88</sup> Galileo Galilei (1564 – 1642) was an Italian natural philosopher, astronomer, and mathematician who gave huge contribution to the development of knowledge such physics, astronomy, cosmology, mathematician, and philosophy. Considered as the father of modern science, he invented the Telescope to observe the solar system and concluded the acceptance of Copernican Heliocentric System to the world. However, his advocacy brought him into Roman Inquisition in 1615. See further at Finocchiaro, Maurice A., 2010, *Defending Copernicus and Galileo: Critical Reasoning in the Two Affairs*, The Netherlands, Springer, p. 74

<sup>89</sup> Axelrod. *Op.Cit.*



**Figure 5. The Trial of Galileo Galilei in 1615**



Source: <https://gohighbrow.com/galileo-affair/>

Reminiscing the mid-16<sup>th</sup> century, in 1543, Nicolaus Copernicus<sup>90</sup> published his writing entitled *De Revolutionibus Orbium Coelestium* (English: *On the Revolution of the Heavenly Spheres*), the seminal work of the Heliocentric System, is often recognized as the beginning of the Scientific Revolution.<sup>91</sup> Besides, the trial of Galileo triggered the world's attention to the development of knowledge despite Church authority. The door for the development of knowledge was opened considerably to scientific thoughts and critical inquiries, later, it followed by the beginning

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<sup>90</sup> Nicolaus Copernicus (Polish: Mikolaj Kopernik) was a Polish astronomer, philosopher, mathematician (1473 – 1543) who famously proposed that the Sun is the central point of the solar system that planets referred to it in fixed motions and Earth orbiting Sun annually. See further at Westman, Robert S., 1998, *Nicolaus Copernicus: Polish Astronomer*, Encyclopedia Britannica, <https://www.britannica.com/biography/Nicolaus-Copernicus>, accessed on 7<sup>th</sup> of January 2019 at 3:33 pm

<sup>91</sup> Rosen, Edward, 1986, *Nicolaus Copernicus*, Encyclopedia Americana: International Edition, Volume 7, Connecticut, Grolier Incorporated, p. 755

of the period where the intellectual and philosophical movement dominated the discourses in Europe called Enlightenment.<sup>92</sup>

The teaching of Christianity seemed impregnable in the Medieval Ages, however, it fell into the assault by the Humanist through Humanism, the Renaissance, and the Protestant-Reformation.<sup>93</sup> The Enlightenment Period was associated by and closely related with the Scientific Revolution.<sup>94</sup> Many notable scholars had involved in the revolution, some major figures are namely: Marquis Beccaria Cesare, Denis Diderot, David Hume, Immanuel Kant, Montesquieu, Jean-Jacques Rousseau, Adam Smith, and Voltaire. Even more, some European rulers were also tried to implement Enlightenment thoughts on religious and political tolerance to the empires such Catherine II of Russia, Joseph II of Austria and Frederick II of Prussia which commonly known as enlightened absolutism.<sup>95</sup>

The turn to the eighteenth century also had given much more challenges to the Enlightenment. In 17<sup>th</sup> century, David Hume writes in the *History of England*<sup>96</sup> “If ever, on any occasion, it was laudable to hide truth

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<sup>92</sup> Robenson, Rusty, “Enlightened Piety during the Age of Benevolence: The Christian Knowledge Movement in the British Atlantic World”, *Church History*, Volume 85(2), 2016, United States of America, American Society of Church History, p. 246

<sup>93</sup> Harvey, Michael G., “Science, Rationality, and Theology”, *The Journal of Religion*, Volume 87(2), 2007, Chicago, The University of Chicago Press, p. 225-227

<sup>94</sup> Cohen, Jerome Bernard, “Scientific Revolution and Creativity in the Enlightenment”, *Eighteenth-Century Life*, Volume 7(2), 1982, Durham, Duke University Press, p. 41-54

<sup>95</sup> Black, Jeremy, “Ancient Regime and Enlightenment: Some Recent Writing on Seventeenth and Eighteenth Century Europe”, *European History Quarterly*, Volume 22(2), 1992, United Kingdom, SAGE Publications, p. 247-255

<sup>96</sup> This is a David Hume’s great work which he wrote while he was a librarian to the University of Edinburgh – Faculty of Advocates. Published in 6 volumes (1754, 1756, 1759, and 1761), the works were greeted with outrage by all political factions, especially the first volume. See further at Wei, Jia, 2017, *Commerce and Politics in Hume’s History of England*, 1<sup>st</sup> Edition, Woodbridge, Boydell & Brewer, p. 224

from the populace, it must be confessed, that the doctrine of resistance affords such an example; and that all speculative reasoners ought to observe with regard to this principle, the same cautious silence which the laws, in every species of government, have ever prescribed to themselves”.<sup>97</sup> Hume was a skeptical thinker whose challenged both theological and nature of reality. Scottish universities, where Hume was teaching, were especially welcome to newer perspectives of philosophy. However, the tolerance was not universal in reception and not all Enlightenment intellectuals accepted the discourses.<sup>98</sup>

Political society supposedly protects the interest of society, a notion that extends the liberties. If there is a government that threatens that interest, society have a right to defend.<sup>99</sup> This idea later proved by many scholars were trying to defend their minds from political resistance in the Enlightenment Age. Such resistance was drawn in the Immanuel Kant’s German writing entitled “*Beantwortung der Frage: Was ist Aufklärung?*” (English: An Answer to the Question: What is Enlightenment?). Kant pointed out the *freedom* is important for the Enlightenment. It is the freedom to make a *public use* of one’s reason in all matters. He added that he hears from all sides the cry: don’t argue! The officer says: “Do not argue, but rather march!”. The tax collector says: “Do not argue, but rather pay!”. The

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<sup>97</sup> Hume, David, 1983, *The History of England from the Invasion of Julius Caesar to the Revolution in 1688*, vol.5, Indianapolis, Liberty Fund, p. 544

<sup>98</sup> Axelrod, *Op.Cit.*

<sup>99</sup> Merrill, Thomas W., “The Rhetoric of Rebellion in Hume’s Constitutional Thought”, *The Review of Politics*, Volume 67(2), 2005, United States of America, Cambridge University Press, p. 259

Clergyman says: “Do not argue, but rather believe!”. Kant wrote that freedom was restricted everywhere, and the only thing was “obey!”.<sup>100</sup>

In the mid-18<sup>th</sup> century before the independence of the United States of America in 4<sup>th</sup> of July 1776, there was an outbreak in 1760 that led to the American Revolution caused by the injustice of parliamentary taxation against the British Parliament. The Revolution movement became a war in 1775 – 1783 pioneered by George Washington, John Adams, Thomas Jefferson, James Madison, Alexander Hamilton, James Monroe, and Benjamin Franklin, who later known as the Founding Fathers of America, to seek for justice. Before the outbreak of the revolution, they began by provoking the public through injustice conducts on taxation by the British Parliament. This radical Enlightenment helped America to gain its independence by the scholars’ initiations.<sup>101</sup> This American history of independence shows us how important scholar roles are in seeking the truth and justice.

Back to Europe, sadly, in the 18<sup>th</sup> and 19<sup>th</sup> century, there were many newly established nation-states universities which received threat to their universities’ autonomy from the government. Scholars were subject to governmental authorities and were allowed to teach what government has

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<sup>100</sup> This is quoted from Immanuel Kant’s essay in 1784 entitled *Beantwortung der Frage: Was ist Aufklärung?* (English: An Answer to the Question: What is Enlightenment?). See further at Schmidt, James, 1996, *What is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, California, University of California Press, p. 59

<sup>101</sup> See further at Bailyn, Bernard, “Political Experience and Enlightenment Ideas in Eighteenth-Century America”, *The American Historical Review*, Volume 67(2), 1962, Oxford, Oxford University Press, p. 340

agreed before. Napoleon Bonaparte, a famous Emperor of the French, made some restrictions upon academic freedom and tried to centralize higher education.<sup>102</sup> This problem led to a reform in Germany initiated by Wilhelm von Humboldt,<sup>103</sup> later so-called Humboldtian Education Ideal. Humboldt enshrined the educational reform with two concepts of *Lehrfreiheit* (Freedom to Teach) and *Lernfreiheit* (Freedom to Learn) under the rubric of *Akademische Freiheit* (Academic Freedom).<sup>104</sup> These two concepts were firmly established and applied into some universities around Europe with state permission such University of Leiden in the Netherlands which provided freedom from political and religious restraint for its academic members.<sup>105</sup>

The outbreak of World War I (WW I) had impacted to the freedom of academic in the world. During the War, Europe was breaking into two coalitions, namely: The Triple Entente or Allied Powers (France, Russia, and United Kingdom) and The Triple Alliance or Central Powers (Germany, Austria-Hungary, and Italy).<sup>106</sup> United States of America (USA) remained

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<sup>102</sup> Brickman, *Op.Cit*, p. 155

<sup>103</sup> Friedrich Wilhelm Christian Karl Ferdinand von Humboldt (1767 – 1835) was a philosopher, diplomat, linguist, and government functionary from Prussia who founded Humboldt University of Berlin. He was famous for his theory of Education Ideal which later known as Humboldt Model. It is a concept of academic education in the 19<sup>th</sup> century which its core idea is a holistic combination of research and studies and integrates comprehensively between arts and sciences. See further at Hohendorf, Gerd, “Wilhelm von Humboldt”, *Prospect: The Quarterly Review of Comparative Education*, Volume 23(3-4), 1993, London, Cambridge University Press, p. 622

<sup>104</sup> Dea, Shannon, 2018, *A Brief History of Academic Freedom*, University Affairs, <https://www.universityaffairs.ca/opinion/dispatches-academic-freedom/a-brief-history-of-academic-freedom/>, accessed on 13<sup>th</sup> of January 2019 at 6:15 pm

<sup>105</sup> Anonymous, 1998, *Academic Freedom*, Encyclopedia Britannica, <https://www.britannica.com/topic/academic-freedom>, accessed on 13<sup>th</sup> of January 2019 at 7:13 pm

<sup>106</sup> At first, Italy chose to be neutral after the outbreak of the WW I even though it was an ally to Germany and Austria-Hungary. Later amid the War, Italy became enemy and fought the

neutral until Germany warship sunk the American's and killed its civilians, by that causality, USA entered the war and joined the Entente.

**Figure 6. The Major Alliances of World War I**



Source: <https://www.thoughtco.com/world-war-one-the-major-alliances-1222059>

One of the impacts of the War was a censorship in many sectors. In USA, the universities became a favourite target for zealots by the soldiers who waged war among themselves at home. Many professors were dismissed because of they gave no support for America and the allies in the WW I.<sup>107</sup> By the mid of the War, in 1915, American Association of University Professor (AAUP) was established to protect and to advance the academic freedom in the higher education learning.<sup>108</sup>

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Alliance. See further at Seymour, Charles, 1916, *The Diplomatic Background of the War, 1870 – 1914*, New Haven, Yale University Press, p. 35

<sup>107</sup> Wilcox, Clifford, "World War I and the Attack on Professors of German at the University of Michigan", *History of Education Quarterly*, Volume 33(1), 1993, Cambridge, Cambridge University Press, p. 59

<sup>108</sup> Anonymous, *History of the AAUP*, American Association of University Professors, <https://www.aaup.org/about/history-aaup>, accessed on 14<sup>th</sup> of January 2019 at 10:15 am

The establishment of AAUP was a manifestation of the universal campaign for greater freedom for academicians in USA. The extension of academic freedom was led by the growth of secularism, example of German universities, and other intellectual factors.<sup>109</sup> The reason behind the establishment of AAUP was because of the unjust suspension of Economist Edward Ross teaching post at Stanford University. Mrs. Leland Stanford, the wife of the founder of Stanford University-Amasa Leland Stanford, was in contrary with Ross views on immigrant labour and railroad monopolies. This case went viral in American and inspired Arthur Oncken Lovejoy and John Dewey to organize a meeting in 1915 to form an organization to ensure the freedom of academic.<sup>110</sup> The result of the meeting was not only the establishing of AAUP, but also was issuing The AAUP's 1915 Declaration of Principles on Academic Freedom and Tenure.<sup>111</sup>

The Declaration was revised twice in 1915 with 1925 Conference Statement on Academic Freedom and Tenure and 1940 Statement of Principles on Academic Freedom and Tenure on 1940. The 1940 Declaration retains the 1915 Statement's focus that included on the rubric of freedom of academic. Those three focuses which fall under the 1940 Statement are:

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<sup>109</sup> Brickman, *Op.Cit*, p. 156

<sup>110</sup> *Op.Cit*.

<sup>111</sup> This declaration is one of most important academic freedom in its development. The Declaration made a radical advancement in developing academic freedom and provided guideposts for the main job of the AAUP for over a century. See further at Wilson, John K., "AAUP's 1915 Declaration of Principles: Conservative and Radical, Visionary and Myopic", *AAUP Journal of Academic Freedom*, Volume 7, 2016, Washington, American Association of University Professors, p. 1

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should always be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

Highlighting the third principle, it reflects the freedom of opinion for scholars to speak or to write thoughts of them.<sup>112</sup>

Back to 1931, a Canadian Historian George MacKinnon Wrong claimed that “in the main universities of the western world are strongholds of conservative thoughts and steady on our society”. The statement was strengthened by Sir Edward Wentworth Beatty of McGill University

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<sup>112</sup> See Chapter Academic Freedom of the 1940 Statement of Principles on Academic Freedom and Tenure



chancellor who wrote on his academic freedom article that defended freedom of thought as “sacred” on one hand, however, it was limited, on the other hand, in the implementation and that to exceed them foolish and wrong<sup>113</sup>. At the same University, two McGill professors namely Eugene Forsey and Frank Hawkins Underhill were suspended from their teaching posts because of their provocation on political authorities. At that time, provoking political authorities was treated as an academic sin.

Similar to the US, Canada later established its association namely the Canadian Association of University Teachers (CAUT) in 1951. The root of the establishment was because of the carnage that happened during the battle of 1917 WW I. Unfortunately, it was witnessed by a young Canadian historian and marked the changes of the life of Frank Hawkins Underhill<sup>114</sup>. Years later, he collected his bravery and voice out to it in 1930s<sup>115</sup>. As R. Douglas Francis wrote in his biographer that “the Great War (WW I) was...the beginning of a new millennium when the full flowering of liberal man would show in all its splendour”.<sup>116</sup> The strong believe for freedom of

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<sup>113</sup> Axelrod, *Op.Cit.*

<sup>114</sup> Frank Hawkins Underhill (1889 – 1971) was a Canadian Journalist, Essayist, Historian, Political Thinker, and Social Critic. He was famous as the commentator on the political matters and controversies during his life. A friction was happened on his public activities with University of Toronto, where he taught, and made him be dismissed after openly concluding that Canada’s relationship with United Kingdom would weaken as its relationship grew stronger with the United States. See further at Stevenson, Garth, 2008, *Frank Hawkins Underhill*, The Canadian Encyclopedia, <https://www.thecanadianencyclopedia.ca/en/article/frank-hawkins-underhill>, accessed on 16<sup>th</sup> of January 2019 at 9:15 am

<sup>115</sup> Horn, Michiel, “The Wood Beyond: Reflections on Academic Freedom, Past and Present”, *The Canadian Journal of Higher Education*, Volume 30(3), 2000, Canada, The University of British Columbia, p. 158

<sup>116</sup> Francis, R. D., 1986, *Frank H. Underhill: Intellectual Provocateur*, Toronto, University of Toronto Press, p. 48

learning liberal arts spread-out all-over Canada ever since. However, the enforcement of this freedom was in danger again thereafter.

**Figure 7. The Outbreak of World War II**



Source: <https://www.thinglink.com/scene/651754712332238849>

The rise of the Third Reich and the outbreak of World War II in 1939 until 1945 (WW II) led to the end of academic freedom and its autonomy principle in universities. These events, primarily, was caused by the aggressions of Nazi<sup>117</sup> in Europe. Adolf Hitler<sup>118</sup> of Nazi's leader attacked

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<sup>117</sup> Nazi (*Nationalsozialistische Deutsche Arbeiterpartei*) was a socialist party established in Germany during the 1940s. It is emerged in the uprising of communist post of World War I Germany from the German nationalist, racist, and populist *Freikorps* paramilitary culture. The party was established as a movement of anti-big business, anti-bourgeois, and anti-capitalist. See further at McDonough, Frank, 2003, *Hitler and the Rise of Nazi Party*, New York, Pearson/Longman, p. 64

<sup>118</sup> Adolf Hitler was the undisputed leader of the Nazis party and was responsible for the Holocaust of six million Jewish people during the WW II. He used propaganda and anti-Semitism to control the Germany and other occupied areas to create fear and rule his great powers. See further at Anonymous, *Adolf Hitler*, United States Holocaust Memorial Museum, <https://encyclopedia.ushmm.org/content/en/article/adolf-hitler>, accessed on 18<sup>th</sup> of January 2019 at 13:33 pm

universities shortly after he was promoted as the Germany Chancellor on 30<sup>th</sup> of January 1933. He distrusted university professors and lecturers as he believed that they, by the very nature of their intellectuals, could resist the government matters in term of ideology (*Gleichshaltung*).<sup>119</sup> Besides, Hitler hated Jewish the most as he believed that Jews are incarnation of evil. He killed six million Jew in Europe during the WW II, including the Jew scholars. It was known as The Holocaust.<sup>120</sup>

One prominent Jewish scholar that Hitler hated was Albert Einstein, a very famous German-born physicist and little-known aspect of him that he was an activist as well. When Hitler and Nazi came into power, Einstein was in USA, however, the threat to Einstein made him stay in US. Of course, he would be dead if he chooses to come back to Germany. His staying in USA did not make him keep silent on a racial discrimination that happen in USA, even though he received a USA citizenship. He realized that African-American community in USA were treated the way like Nazi treats Jews in Germany. Fortunately, the way Einstein approached the problem was worth

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<sup>119</sup> Trueman, C. N., 2015, *Universities in Nazi Germany*, The History Learning Site, <https://www.historylearningsite.co.uk/nazi-germany/universities-in-nazi-germany/>, accessed on 18<sup>th</sup> of January 2019 at 9:15 am

<sup>120</sup> One of the most discussed Jewish victims of the Holocaust was Annelies Marie Frank or Anne Frank of Germany-diarist. She wrote her effort to hide from Nazi soldiers in the Netherland during the occupation of the Netherland (1942 – 1944) by Nazi who wanted to kill her and all Jew people into her writing named *Het Achterhuis* (English: The Secret Annex). The writing gained fame with the publication of *The Diary of a Young Girl*. The book is one of the world's most widely known and been filmed for several films to illustrate how terrible Nazi was. See further at Barnouw, David and Gerrold van Der Stroom, 2003, *The Diary of Anne Frank: The Revised Critical Edition*, New York, Doubleday, p. 3 and See also Anonymous, *Hitler's Antisemitism: Why Did He Hate the Jews?* Anne Frank House, <https://www.annefrank.org/en/anne-frank/go-in-depth/why-did-hitler-hate-jews/>, accessed on 18<sup>th</sup> of January 2019 at 13:15 pm

it. The way he overcame the racial discrimination was with his very childlike question such “What would my life be like if I were black?”.<sup>121</sup>

All Jewish lecturers and students were dismissed from the universities. Not only control the admission, but also the curriculum. Hitler had controlled the universities to teach in a Nazi way and for subjects that have been agreed by Nazi before. Thus, the universities became the fundamental institutions that would doctrine the Nazi beliefs to the academic elites in nation.<sup>122</sup> In contrary, there were many universities that openly supported him and Nazis.

Julien Benda (1920) said many scholars betraying universal ideas in favour of the interests of nationalist right-wingers and communists, including Nazi, and defend the interests with their knowledges. Benda fought against Nazi with his advocacy of the intellectual as the defender of universalist values. Besides, many have killed by these interests.<sup>123</sup> During that time, being a liberalist was a crime that could harm the political interest of the ruling parties. Scholars had no choice rather than to keep silent or they will find themselves on a threat if they try to fight back. Scholars who openly support the ruling parties were given the privileges, however, they

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<sup>121</sup> Gewertz, Ken, 2007, *Albert Einstein, Civil Rights Activist*, The Harvard Gazette, <https://news.harvard.edu/gazette/story/2007/04/albert-einstein-civil-rights-activist/>, accessed on 31<sup>st</sup> of January 2019 at 7:15 pm

<sup>122</sup> See further at Bialas, Wolfgang and Anson Rabinbach, 2014, *Nazi Germany and the Humanities: How German Academics Embraced Nazism*, London, Oneworld Publications, p. 39 – 42

<sup>123</sup> Muller, Jan-Wenner, “Julien Benda’s Anti-Passionate Europe”, *European Journal of Political Theory*, Volume 5(2), 2006, California, SAGE Publications, p. 125

have corrupted the purity of the knowledge that the purpose is for the sake of the goodness of life.

The death of Hitler marked the end of the WW II on 1945. Hitler decided to commit suicide by shooting his head with a gun on 30<sup>th</sup> of April 1945 in his bunker (German: *Führerbunker*).<sup>124</sup> Without Hitler as the leader, Germany lost its important pion and was on the verge of collapse from the War to the Allies.<sup>125</sup> Later, the news spread out all over the world and begun to repair the world from the destructions after the War. One major important event that happen after the end of the WW II was the declaration of Universal Declaration of Human Rights (UDHR) on by the UN.<sup>126</sup> It remarked the beginning of the new era for human rights in the world.

**Figure 8. Front Page from the Lines of the End of World War II**



<sup>124</sup> Kershaw, Ian, 2008, *Hitler: A Biography*, New York, W. W. Norton & Company, p. 955

<sup>125</sup> Horrabin, J. F., 1946, *An Atlas-History of the Second Great War: Vol. X – May 1944 to August 1945*, Edinburgh, Thomas Nelson & Sons, p. 51

<sup>126</sup> Article 19 of Universal Declaration of Human Rights (UDHR). GA Res 217A (III). 10 December 1948. A/810 91.

Source: <https://www.stripes.com/news/special-reports/world-war-ii-the-final-chapter/wwii-victory-in-europe/front-pages-from-the-front-lines-of-the-end-of-world-war-ii-1.344004>

The historical background of the Declaration cannot be separated from the War itself. The Allies, which later become an intergovernmental organization named the UN on 24<sup>th</sup> of October 1945,<sup>127</sup> adopted Four Freedoms namely Freedom of Speech, Freedom of Religion, Freedom from Fear, and Freedom from Want as their fundamental war aims.<sup>128</sup> It was introduced by Franklin Delano Roosevelt on 6<sup>th</sup> of January 1941 and was adopted by the UN as it was grounded from the insufficient of the basic freedoms' definition in the UN Charter.<sup>129</sup> Consist of 30 articles in which its Article 18 – 21 focused on the constitutional liberties with political, spiritual, and public freedom such as freedom of thought, freedom of opinion, freedom of religion, and freedom of conscience. Article 19 emphasizes the essential freedom of opinion and expression without interference.

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<sup>127</sup> United for Human Rights, <https://www.humanrights.com/what-are-human-rights/universal-declaration-of-human-rights/>, accessed on 20<sup>th</sup> of January 2019 at 10:15 pm

<sup>128</sup> Bodnar, John, 2010, *The "Good War" in American Memory*, Maryland, John Hopkins University Press, p. 11

<sup>129</sup> Universal Declaration of Human Rights, <https://archive.is/AsgR>, accessed on 20<sup>th</sup> of January 2019 at 9:11 pm

**Figure 9. Eleanor Roosevelt and the UDHR**



Source: <https://www.amnesty.org.uk/universal-declaration-human-rights-UDHR>

Freedom of expression is essential to live up democracy and good governance.<sup>130</sup> The UDHR can be said as the Universal Constitution of the Human Rights that gives birth to many legal instruments in the world for its basic democracy and good governance rules in guaranteeing freedom of expression. For example, Article 10 of the European Convention on Human Rights (ECHR) 1950, Article 5 of the International Convention on the Elimination of Racial Discrimination (ICERD) 1965, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966.

Regionally, some legal instruments which regulated freedom of expression as resourced to the UDHR namely Article 13 of the American Convention on Human Rights (ACHR) 1969, Article 9 of the African

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<sup>130</sup> Norris, Pippa, 2008, *Driving Democracy: Do Power-Sharing Institutions Work?* New York, Cambridge University Press, p. 186

Charter of Human and People's Rights (ACHPR) 1981<sup>131</sup> and Article 23 of the ASEAN Human Rights Declaration (AHRD) 2012. All these legal instruments are trying their best to uphold the freedom of expression. However, freedom of expression is a universal freedom and academic freedom for scholar was still lack of protection.

In 1988, through the 68<sup>th</sup> General Assembly of the World University Service (WUS) held in Lima, Peru from 6<sup>th</sup> to 10<sup>th</sup> of January, the ICCPR Articles on Academic Freedom is expressly recognized in the adoption of Lima Declaration on Academic Freedom and Autonomy of Institution of Higher Education. Lima Declaration is a further action on real enforcement to the freedom of academic in the world. Since then, many agreements on academic freedom were made as to mention such The Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics and on the 900<sup>th</sup> years of the founding of University of Bologna, it established a document to celebrate university traditions and encourage its freedom namely the *Magna Charta Universitatum* (English: Great University Charter). This Charter focuses on the definition and enforcement of freedom of academic for university and scholar in the world and has been signed by 889 universities from 88 countries. Sadly, there is only one

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<sup>131</sup> O'Flaherty, Michael, "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No. 34", *Human Rights Law Review*, Volume 12(4), 2012, Switzerland, Springer, p. 630



university that signed this Charter, Universitas Mulawarman<sup>132</sup> until now.<sup>133</sup>

Also, there are many violations against scholars since the independence of the Republic of Indonesia. Academic freedom in Indonesia is still less protected.

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<sup>132</sup> Universitas Mulawarman (UNMUL) is a public university located in Samarinda, East Kalimantan, Indonesia. Established on 27<sup>th</sup> of September 1962 by the issuance of Governor of East Kalimantan Decree No. 15/PPK/KDH/1962 on the Establishment of Universitas Mulawarman., UNMUL is the oldest university in East Kalimantan with more than 35,000 students. Universitas Mulawarman, *Sejarah Universitas Mulawarman*, <http://www.unmul.ac.id/page/sejarah-singkat-universitas-mulawarman-1486971670.html>, accessed on 21<sup>st</sup> of January 2019 at 1:10 am

<sup>133</sup> Observatory Magna Charta Universitatum, <http://www.magna-charta.org/magna-charta-universitatum/signatory-universities>, accessed on 21<sup>st</sup> of January 2019 at 1:12 am

## **B. A Long Journey of Academic Freedom in Indonesia: From the Proclamation to the Reformation**

Gained its independence on 17<sup>th</sup> of August 1945, Indonesia begins to build the country after being colonized by British, Portuguese, Dutch, and Japanese for more than 3 centuries consecutively. It was led by Soekarno and Mohammad Hatta, two of Indonesian's most prominent nationalists, who pronounced Indonesian's proclamation and started the Order under the leadership of Ir. Soekarno as the first President of Indonesia and accompanied by Drs. Mohammad Hatta as its Vice President.<sup>134</sup> Since then until now, there has been three eras of Indonesian government, namely Old Order (1945 – 1965),<sup>135</sup> New Order (1965 – 1998), and Reformation Era (1998 – Present).

The recent Indonesia's ruling government is led by President Joko Widodo or Jokowi. A low-profile individual who won many hearts of people by its characteristic, led Indonesia to such a 'developmental' country. Jokowi's regime focuses to build the infrastructure of the country. Toll roads, airports, and others are built faster than the previous government. However, many people have argued that Jokowi's regime turns authoritarian as it often committed controversial actions or even illegal instruments.

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<sup>134</sup> See further at Haryono Rinardi, "Proklamasi 17 Agustus 1945: Revolusi Politik Bangsa Indonesia", *Jurnal Sejarah Citra Lekha*, Volume 2(1), 2017, Semarang, Universitas Diponegoro, p. 143 – 149

<sup>135</sup> Soekarno was promoted as a lifetime president of the Republic of Indonesia by Majelis Permusyawaratan Rakyat or MPR (English: People's Consultative Assembly) based on MPRS Decree No. III/MPRS/1963 on the Promotion of the Leader of Indonesian Revolution Bung Karno to be the Lifetime President of the Republic of Indonesia. This decision was argued both positively and negatively by many scholars.

## 1. The Founding of Indonesia and the Rule of Old Order

After the fall of Imperial Japanese Army on the WW II due to the nuclear attacks at Hiroshima on 6<sup>th</sup> of August 1945 and Nagasaki on 9<sup>th</sup> of August 1945 by the United States Army Air Forces (USAAF),<sup>136</sup> Japan chose to surrender to the Allies.<sup>137</sup> Japan retreated its armies in Indonesia, making the absence of the governance during that time. Soekarno, Hatta, and other national heroes considered this occasion as a golden opportunity to gain the independence freely from the colonialization of the Japanese rule even though Japan offered the independence of Indonesia as a gift from them. Later, Panitia Persiapan Kemerdekaan Indonesia (PPKI)<sup>138</sup> was established on 7<sup>th</sup> of August 1945 as the new form of Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI).<sup>139</sup>

A few months before the independence, on July 1945, BPUPKI had decided on the ideological basis of independent Indonesia goes to Pancasila and produced the draft for the Constitution.<sup>140</sup> This action was followed up

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<sup>136</sup> Ochiai, Ei-Ichiro, 2014, *Hiroshima to Fukushima: Biohazards of Radiation*, Germany, Springer-Verlag Berlin and Heidelberg GmbH & Co. K, p. 35 – 37

<sup>137</sup> Due to the huge lost and massive destruction Imperial Japanese had because of the nuclear bombings in Hiroshima and Nagasaki by USAAF, Imperial Japanese Army announced to surrender to Allies on 15<sup>th</sup> of August 1945 and formally signed on 2<sup>nd</sup> of September 1945. The surrender of Japan brought World War II to the end. The announcement of Japan's surrender was announced through radio by Emperor Hirohito. See further at Anonymous, 1945, *Text of Hirohito's Radio Speech*. The New York Times, <https://www.nytimes.com/1945/08/15/archives/text-of-hirohitos-radio-rescript.html?url=http%3A%2F%2Ftimesmachine.nytimes.com%2Ftimesmachine%2F1945%2F08%2F15%2F88279592.html%3FpageNumber%3D3>, accessed on 25<sup>th</sup> of January 2019 at 8:15 am

<sup>138</sup> English: The Preparatory Committee for Indonesian Independence.

<sup>139</sup> English: The Investigating Committee for Preparatory Work for Independence. Japanese: 独立準備調査会 *Dokuritsu Junbi Chōsa-kai*

<sup>140</sup> Kahin, George McTurnan, 1951, *Nationalism and Revolution in Indonesia*, New York, Cornell University Press, p. 127

by the PPKI meetings one day after the independence of Indonesia which was pronounced the proclamation by Soekarno and Hatta on 17<sup>th</sup> of August 1945 in Jakarta.<sup>141</sup> The PPKI meeting resulted to the promotion of Soekarno as the first President and Hatta as the first Vice President of Indonesia. Besides the promotion, the meeting also declared the first Constitution of Indonesia called the 1945 Constitution of Indonesia or *Undang-Undang Dasar 1945* (UUD 1945).<sup>142</sup>

**Figure 10. Ir. Soekarno and Drs. Mohamad Hatta**



Source: <https://www.idntimes.com/life/inspiration/ali-alghofiqi/17-kutipan-soekarno-hatta>

Soekarno and Hatta's role as the President and Vice President of Indonesia was officially active on 1950 assuming from the two postcolonial aggressions launched by the Dutch Empire after the proclamation of

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<sup>141</sup> PPKI consisted of 21 scholars representing each regions and ethnics or races. Each representation contributed on the formulation of the Constitution of Indonesia based on each regional interetests. See further at Saafroedin Bahar and Nani Hudawati, 1998, *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI)-Panitia Persiapan Kemerdekaan Indonesia (PPKI)*, Jakarta, Sekretariat Negara Republik Indonesia, p. 311 – 312

<sup>142</sup> See further at Saifudin, "Lahirnya UUD 1945: Suatu Tinjauan Historis Penyusunan dan Penetapan UUD 1945", *Jurnal Fakultas Hukum UII*, Volume 49(3), 2003, p. 311 – 313

Indonesia on 1945.<sup>143</sup> It ended on January 1949 by the issuance of the UN Security Council Resolution 67.<sup>144</sup> The aftermath of it was the hold of *Konferensi Meja Bundar Belanda – Indonesia* (English: Dutch-Indonesia Round Table Conference) in Den Haag, The Netherland and resulted to the establishment of the Republic of the United States of Indonesia on 27<sup>th</sup> December 1949.<sup>145</sup>

During the hectic state's activities to form up the governance, protection of freedom was not the focus of the agenda. Regulation on the protection of freedoms were only regulated on Article 28 of the first Constitution of Indonesia which stated:

*“Kemerdekaan berserikat dan berkumpul, mengeluarkan pikiran dengan lisan dan tulisan dan sebagainya ditetapkan dengan undang-undang. (English: Freedom of association and assembly, issue thoughts in oral and written terms and all are stipulated by law.)”*

On the Article 29 of the Constitution, it protected the freedom of religion.

However, the enactment and enforcement of these Articles were not well-

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<sup>143</sup> See further at Vickers, Adrian, 2005, *A History of Modern Indonesia*, Cambridge, Cambridge University Press, p. 99

<sup>144</sup> The contents of the Resolution are the military ceasefire between the Dutch and Indonesia, the agenda of future peaceful meeting, the unconditional release of all war prisoner of politics in Indonesia within 19<sup>th</sup> of December 1948 until the issuance of this Resolution, the transfer of sovereignty to Indonesian government in Yogyakarta to run the governmental affairs, hold a negotiation no later than 1<sup>st</sup> of July 1949 based on Linggarjati and Renville agreements, the freedom to formulate the Constitution, and the establishment of United Nations Commission for Indonesia (UNCI). See further at United Nations Security Council Resolution 67 adopted on 28<sup>th</sup> of January 1949, <http://unscr.com/en/resolutions/67>, accessed on 25<sup>th</sup> of January 2019 at 11:15 pm

<sup>145</sup> Denny Indrayana, 2008, *Indonesian Constitutional Reform 1999 – 2002*, Ph.D Thesis, Melbourne, Faculty of Law University of Melbourne, p. 5 – 6

gone. During that time, the influence of UDHR got no attention in arranging the Constitution.

Soekarno's ideology was a radical nationalist whereby young Soekarno was filled with revolutionary idealism and anti-oppression. However, at the end of his reign, he turned to be a repressive and anti-democratic thinker.<sup>146</sup> Hatta got into dissenting opinion with him in some state matters long before the Independence Day. Soekarno's governmental actions brought him into dissenting opinion with his Vice President, Hatta, for some state matters.<sup>147</sup>

Along with Soekarno and Hatta, other founding fathers were Sutan Sjahrir, an idealistic Indonesian scholar and the first Prime Minister of Indonesia in 1945 – 1947, and Tan Malaka, an Indonesian philosopher, once a teacher, and Indonesian national hero,<sup>148</sup> even he was credited as the Father of the Republic of Indonesia by Tempo.<sup>149</sup> These four founding fathers contributed to the early development of the country. However, because of Soekarno's radical nationalist principle, the other three were walking away from his path. As mentioned above, Hatta was in contrary

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<sup>146</sup> Gili Argenti and Dini Sri Istiningdias, "Pemikiran Politik Soekarno tentang Demokrasi Terpimpin", *Jurnal Politikom Indonesiana*, Volume 2(2), 2017, Karawang, Universitas Singaperbangsa Karawang, p. 14

<sup>147</sup> Hadi Hartanto, 2005, *Sejarah Pertentangan Soekarno-Hatta dan Pengaruhnya Terhadap Kebijakan Politik Indonesia (1956 – 1965)*, Undergraduate Thesis, Semarang, Fakultas Ilmu Sosial Universitas Negeri Semarang, p. 89 – 104

<sup>148</sup> Faisal and Firdaus Syam, "Tan Malaka, Revolusi Indonesia Terkini", *Jurnal Kajian Politik dan Masalah Pembangunan*, Volume 11(1), 2015, Jakarta, Universitas Nasional, p. 1576

<sup>149</sup> Tan Malaka was the first man who introduced the concept of the Republic of Indonesia. Muhammad Yamin called him "Father of the Republic of Indonesia" even Soekarno called him "an expert in the revolution". See further at Tim Buku Tempo, 2010, *Tan Malaka: Bapak Republik Yang Dilupakan*, Jakarta, Gramedia Pustaka Utama

with Soekarno since 1930<sup>150</sup> so did Sutan Sjahrir and Tan Malaka. Soekarno turned to be an authoritarian president since then.

Amid Indonesian crisis of 1957, Soekarno ordained “Guided Democracy” as the way out of the crisis. This form of government symbolized policies but a significant dictatorship since it dominated by the personality of Soekarno in governing the government.<sup>151</sup> Since then, there were many predictions that Soekarno’s regime must soon collapse.<sup>152</sup> Due to the conservative regime that Soekarno made, the thoughts were limited by the regime for those who are in contrary or against the Soekarno’s deeds. This action brought to the retirement of Hatta as the Vice President.

Hatta was retired as the Vice President on 1<sup>st</sup> of December 1956 as the climax of his dissenting opinions with Soekarno. Hatta sent a letter to the *Dewan Perwakilan Rakyat* (DPR) or the House of Representative Council of Indonesia on 20<sup>th</sup> July 1956 stated “...after the DPR has been well established and constituent based on people-oriented has been well formed, this is the time for me to retire as the Vice President”.<sup>153</sup> The DPR later granted Hatta’s request to retire.<sup>154</sup>

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<sup>150</sup> It was predicted on 1930, Hatta had different political view with Soekarno. Soekarno’s strategy focused on mass mobilization, while Hatta was elite educated person which prioritized the education of a handful of elites. See further at Dhio Faiz, 2018, *Dwitunggal Soekarno-Hatta, Cerita Konflik dan Hormat 2 Sahabat*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20180816204745-20-322921/dwitunggal-sukarno-hatta-cerita-konflik-dan-hormat-2-sahabat>, accessed on 23<sup>rd</sup> of January 2019 at 6:15 pm

<sup>151</sup> Ricklefs, M. C., 1993, *A History of Modern Indonesia since c. 1300*, London, Palgrave, p. 257

<sup>152</sup> Mackie, J. A. C., “Indonesian Politics under Guided Democracy”, *Australian Outlook*, Volume 15(3), 1961, Australia, Taylor & Francis, p. 260

<sup>153</sup> Salman Alfarizi, 2013, *Mohammad Hatta: Biografi Singkat 1902 – 1980*, Yogyakarta, Grasi House of Book, p. 189

<sup>154</sup> Rose, Mavise, 1991, *Indonesia Merdeka: Biografi Politik Mohammad Hatta*, Jakarta, Gramedia Pustaka Utama, p. 184

Shortly after Hatta's retirement as the Vice President on 1956, one year ahead, he spoke at the *Universitas Indonesia* (UI) showing the importance of scholars (he called intelligentsia) to imply its responsibility, that is to seek and fight for the truths.<sup>155</sup> Hatta highlighted that scholars burdened by its huge responsibility as they are educated people. Moreover, Hatta enthusiastically urged scholars to help the government to improve the development of social life, not to let them be controlled by the ruler for the sake of their interests.

On the other hand, Soekarno became more and more authoritarian. It can be seen from the way how he dissolved the Masyumi party as it often criticized and opposed Soekarno's policies and Guided Democracy by the issuance of the Presidential Decree of 5<sup>th</sup> of July 1959. He felt that the existence of Masyumi would be a burden for him to realize his ambition.<sup>156</sup> One fact that Masyumi, who known as its Islamic-ideological party, opposes Communism, as it covered in the ideology of *Partai Komunis Indonesia* (PKI) or Indonesian Communist Party. Hamka, one of Masyumi's representative on Constituent, was repressed by Soekarno after the dissolution of Masyumi party. His magazine entitled *Panji Masyarakat* (People's Flag) was banned along with Hatta's book of *Demokrasi Kita* (Our Democracy).<sup>157</sup>

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<sup>155</sup> Imam Moedjiono, "Cendekiawan dan Kebebasan Akademik", *Jurnal Pendidikan Islam FIAI Jurusan Tarbiyah*, Volume 5, 1999, Yogyakarta, Universitas Islam Indonesia, p. 71

<sup>156</sup> Zainal Muslim A., 2013, *Sikap Politik Soekarno Terhadap Masyumi Tahun 1957 – 1960*, Undergraduate Thesis, Semarang, Faculty of Social Science, p. 76

<sup>157</sup> Fauzan, 2003, *Mengubur Peradaban: Politik Pelarangan Buku di Indonesia*, Yogyakarta, LKIS dan YSIK, p. 119



Hamka was arrested by the Police and convicted to violate the Presidential Decision No. 11 Year 1963 on Subversion Activity Eradication. He was accused to conduct illegal meetings against the President Soekarno and the Government. Political propaganda was spread-out all-over Indonesia afterwards through the newspaper. Pro-PKI newspapers under the Guided Democracy, *Harian Rakjat*; *Bintang Timur*; and *Lekra*, placed Hamka as its main target. Besides, a writer such Pramoedya Ananta Toer (Pram) was also targeted for his writings which woken up people's mind.<sup>158</sup>

The Order of Soekarno came close to the end after the outbreak of 30<sup>th</sup> September Movement by PKI on 1965 (G30 S/PKI). PKI kidnapped six Indonesian army generals and one captain.<sup>159</sup> They were brought to Lubang Buaya in a suburb on the South East part of Jakarta and interrogated them brutally. In the end, they were mutilated and placed on a pit in Lubang Buaya. On the next day, 1<sup>st</sup> of October 1965, the Commander of *Korps Strategis Angkatan Darat* (KOSTRAD) or Army's Strategic Reserve led the team to end the insurgency. Soeharto and his associates blamed the PKI as the mastermind of the insurgency, soon later, the country was fuelled by anti-PKI demonstration, they burned the PKI headquarters to the ground.<sup>160</sup>

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<sup>158</sup> M. Putra Rusdiyansyah, 2017, *Dinamika Persahabatan Buya Hamka dan Ir. Soekarno 1941 – 1966 M*, Undergraduate Thesis, Surabaya, Universitas Islam Negeri Sunan Ampel, p. 70 – 71

<sup>159</sup> The 7 Indonesian Military officers who were kidnapped and killed by PKI during the 30<sup>th</sup> September movement (G30 S/PKI) known as the *Tujuh Pahlawan Revolusi* (7 Revolution Heroes). Those are General Achmad Yani, Lieutenant General R. Suprpto, Lieutenant General M. T. Haryono, Lieutenant General S. Parman, Major General D. I. Pandjaitan, Major General Sutoyo Siswomiharjo, and Captain Pierre Tandean. Based on the Presidential Decision No. 111/KOTI/1965, they are recognized as the National Heroes.

<sup>160</sup> Hughes, John, 2002, *The End of Soekarno – A Coup that Misfired: A Purge that Ran Wild*, Singapore, Archipelago Press, p. 160

The climax of the event was the capture of Dipa Nusantara Aidit, the Senior Leader of PKI on 25<sup>th</sup> of November 1965 and was executed to death.<sup>161</sup>

The relationship between Soekarno and PKI was highlighted as the reason of many people step down from his ally's lane. The aftermath of the G30 S/PKI was student demonstration fuelled the Merdeka Palace on January to February in demanding the disbandment of PKI. Two students namely Arief Rachman Hakim and Zubaedah were killed during the demonstration by a gunshot from Presidential Guards.<sup>162</sup> Soon later, Soekarno issued Presidential Order known *Surat Perintah Sebelas Maret* (SUPERSEMAR) or 11<sup>th</sup> of March Instruction Letter<sup>163</sup> which was giving the authority to Soeharto to take all necessary measure to guarantee the security and stability of the government and the country.

The climax of the end of Soekarno's regime was the rejection of his speech in front of *Majelis Permusyawaratan Rakyat Sementara* or the MPRS (Temporary People's Consultative Assembly). By 12<sup>th</sup> of March 1967, the lifetime President title was striped by the MPRS and replaced Soekarno as the President of Indonesia to Soeharto<sup>164</sup>.

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<sup>161</sup> Roosa, John, 2006, *Pretext for Mass Murder: The September 30<sup>th</sup> Movement and Suharto's Coup d'Etat in Indonesia*, Wisconsin, The University of Wisconsin Press, p. 69

<sup>162</sup> Bulky Ranga Permana, 2018, *Tertembaknya Arief Rahman Hakim Mempercepat Pelengseran Sukarno*, Tirto.id, <https://tirto.id/tertembaknya-arif-rahman-hakim-mempercepat-pelengseran-sukarno-cE8y>, accessed on 26<sup>th</sup> of January 2019 at 8:15 pm

<sup>163</sup> SUPERSEMAR is an official letter made by Soekarno to transfer legally the executive power from the President to the *Tentara Nasional Indonesia* (TNI) or Indonesian National Army. The content of the letter was a Presidential instruction for the TNI to take any means to ensure the security and public order and the stability of the country. See further at Harsa Permata, "Gerakan 30 September 1965 Dalam Perspektif Filsafat Sejarah Marxisme", *Jurnal Filsafat*, Volume 25(2), 2015, Yogyakarta, Universitas Gadjah Mada, p. 244

<sup>164</sup> Ricklefs, M. C., *Op.Cit*, p. 295

## 2. The Fall of Soekarno and the Raising of New Order

History recorded that Soeharto is the longest president ever ruled in Indonesia. For about 32 years, he held the presidential office since the fall of Soekarno's regime on 1966 until the late of 20<sup>th</sup> century. Along his presidential rules, many people argued the decline on the freedoms that Indonesia experienced. From the decline on Press Freedom to the decline on democracy, Soeharto became more even authoritarian than his predecessor, Soekarno. However, Soeharto's presidency gave so many positive impacts to the country. Even he was awarded as the "*Bapak Pembangunan Indonesia*" (Indonesian Development Father) by the MPR through the MPR Decree No. V/MPR/1983.

**Figure 11. Soeharto and His Wife Tien**



Source: <https://www.merdeka.com/peristiwa/ini-yang-dilakukan-presiden-soeharto-saat-ibu-negara-dihina.html>

During the 1966 – 1967, since the failed of the coup attempted by the PKI, Soeharto and his regime cleaned up all PKI's legacies, including

the followers. Individuals who suspected to associate with PKI or having affiliation to leftists went to prison as the command of Soeharto. Large number of scholars and students were imprisoned without trial due to the suspicion of their sympathy to the PKI or leftist. Soeharto, later, grouped them into three categories namely:

- 1) Group A members including officials of the PKI and its affiliates. They were tried and sentenced to death
- 2) Group B members who were detained without charge even without enough evidence
- 3) Group C members who considered guilty only by their sympathy to the PKI or leftish groups<sup>165</sup>

Until the end of his regime, those who accused for having been members or associated to the G30 S/PKI tragedy were under the surveillance, freedom of movement restriction, have no right to vote in the political events, and were banned for being civil servant including teachers in government school as well as their rights to publish article in mass media or other publications.<sup>166</sup> Academic life, since then, being targeted and oppressed for what was it called as the polarization. People being polarized by how Soeharto governed the country. Communism was such an illness where individual who try to speak the truth or giving advocacy for human rights violations will be labelled of being infected with communism.

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<sup>165</sup> Saunders, *Op.Cit*, p. 12

<sup>166</sup> Saunders, *Op.Cit*.

Moreover, Soeharto made a fake trial for them as camouflage to the international human rights consumption.<sup>167</sup>

Academic freedom cannot be separated from basic political freedom. Freedom to express academic opinions, to pursue research and scholarship, showing that the important role scholars have, yet, it can be a threat to the authorities whom their interest are against. Authorities, somehow, perceive scholars are their burden to achieve their interests. In case of Soeharto, in fact, New Order brought Indonesia into the stability on politics and sustainability on economic policymaking, however, it cost for undemocratic political situation created by the government through strong repression to the press and opposition groups.<sup>168</sup>

At the same moment, as an international effort to uphold justice on human rights matters, the UN issued the International Bill of Human Rights as the result of the UN General Assembly Resolution 217 (III). This resolution consists of the UDHR which was adopted on 1948 and established two covenants in 1966 namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These two covenants officially came into force on 1976. The ICCPR covers the basic political rights of human such rights to life,<sup>169</sup> freedom of religion,<sup>170</sup> freedom of

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<sup>167</sup> Vickers, *Op.Cit*, p. 157

<sup>168</sup> Saunders, *Op.Cit*.

<sup>169</sup> Article 6 of the ICCPR

<sup>170</sup> Article 18 of the ICCPR

speech,<sup>171</sup> freedom of association,<sup>172</sup> electoral rights,<sup>173</sup> rights to due process as well as fair trial,<sup>174</sup> etc. Meanwhile, the ICESCR covers the economic rights such labour rights,<sup>175</sup> rights to health,<sup>176</sup> rights to education,<sup>177</sup> rights to standard of living,<sup>178</sup> etc.

Soeharto's regime did not pay attention a lot on the international affairs on human rights until his two-third terms of presidency. The table below shows the status of ratification of international human rights instrument under the 32-years-long Soeharto's rule (before 21<sup>st</sup> of May 1998):

**Table 1. Indonesia's Ratification Status for International Human Rights Instruments under the Soeharto's Rule**

No.	Name of Instrument	Supervisory Body	Signatory	Ratification	Declaration/Reservation
1.	International Covenant on Civil and Political Rights (ICCPR) 1966	Human Rights Committee	No	No	No
2.	International Covenant on Economic, Social, and Cultural Rights	Committee on Economic, Social, and Cultural Rights	No	No	No

<sup>171</sup> Article 19 of the ICCPR. As such stipulated-on Article 19 of the UDHR, ICCPR also mandates the guarantee and protection of the freedom of speech. This Article is the basis of the academic freedom protection in the world.

<sup>172</sup> Article 22 of the ICCPR

<sup>173</sup> Article 25 of the ICCPR

<sup>174</sup> Article 14 and 15 of the ICCPR

<sup>175</sup> Article 6, 7, 8, and 9 of the ICESCR

<sup>176</sup> Article 12 of the ICESCR

<sup>177</sup> Article 13 and 14 of the ICESCR

<sup>178</sup> Article 11 of the ICESCR

	and Cultural Rights (ICESCR) 1966				
<b>3.</b>	International Convention on the Elimination of Discrimination against Women (ICEDAW) 1979	Committee on the Elimination of Discrimination against Women	29 <sup>th</sup> of July 1980	Law No. 7 Year 1984	Reservation Article 29 (1)
<b>4.</b>	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1969	Committee on the Elimination of Racial Discrimination	No	No	No
<b>5.</b>	International Convention against Torture (ICAT) 1984	Committee against Torture	23 <sup>rd</sup> of October 1985	No (Ratified after the Fall of Soeharto under the Law No. 5 Year 1998)	Declaration Article 20 (1), (2), (3), and Reservation Article 30 (1)
<b>6.</b>	International Convention on the Rights of the Child 1989	Committee of the Rights of the Child	26 <sup>th</sup> of January 1990	Presidential Decision No. 36 Year 1990	Reservation Article 1, 14, 16, 17, 21, 22, and 29

By seeing the **Table 1**, Soeharto were not into human rights enforcement specified to political and economic matters.

In 1973, all nine existing political parties were pressured to join one of two larger parties namely Islamic ideological party of *Partai Persatuan Pembangunan* (PPP) or United Development Party<sup>179</sup> and nationalist ideological party of *Partai Demokrasi Indonesia* (PDI) or Indonesian Democratic Party.<sup>180</sup> Beside *Golongan Karya Party* (GOLKAR) or Functional Groups Party<sup>181</sup> which mostly consists of militaries and civilians including Soeharto, the other two parties were prohibited to establish their offices in rural areas. This idea was introduced under the term “floating mass” in which the voting right is given to the populace only every five years, but otherwise refrain from political activities<sup>182</sup>.

The authoritarian and dictatorship of Soeharto went to the censorship of book and other academic writings. The book censorship was happened since Soekarno’s era by the issuance of Presidential Decree No. 4 Year 1963 on the Safeguard on Printing Goods that the Contents Can

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<sup>179</sup> PPP was formed in 1973 as the result of merger between Partai Nahdlatul Ulama (NU), Partai Serikat Islam Indonesia (PSII), Persatuan Tarbiyah Islamiyah (PERTI) and Persaudaraan Muslim Indonesia (PERMUSI). The order to merger political parties in Indonesia was made by Soeharto to assume the umbrella party role for Islam and Muslim in politics in Indonesia. See further at Abuza, Zachary, 2007, *Political Islam and Violence in Indonesia*, New York, Routledge, p. 21

<sup>180</sup> As like PPP, PDI was formed in 1973 due to the Soeharto’s policy on political party. PDI was a merger party from Partai Nasional Indonesia (PNI), Partai Kristen Indonesia (PARKINDO), Partai Katholik, Ikatan Pendukum Kemerdekaan Indonesia (IPKI), and Musyawarah Rakyat Banyak (MURBA). Due to the interference from the government because of the promotion of Megawati Soekarnoputri, daughter of Soekarno, and internal dispute, PDI was dissolved. Later after the fall of Soeharto, Megawati rebuilt the party and changed the name into Partai Demokrasi Indonesia Perjuangan (PDIP) or Indonesian Democratic Party of Struggle. See further at Partai Demokrasi Indonesia Perjuangan, *Charter of Struggle*, <https://pdiperjuangan.id/article/category/child/25/Partai/Piagam-PDI-Perjuangan>, accessed on 29<sup>th</sup> of January 2019 at 2:15 pm

<sup>181</sup> GOLKAR was established in 1964 as a joint secretariat of Functional Group to match up the PKI during the Soekarno’s era. It was initiated by mostly military officers, including Soeharto. GOLKAR became Soeharto’s political instrument in ruling the country for 32 years as the president. See further at Golongan Karya, *History of Golkar Party*, <http://www.golkar.or.id/sejarah-partai-golkar>, accessed on 29<sup>th</sup> of January 2019 at 2:33 pm

<sup>182</sup> Saunders, *Op.Cit*, p. 18.



Disturb Public Order and continued to the Soeharto's regime. Soeharto carefully paid attention on any efforts that might seize his position. After the PKI's coup, he used the Decree to ban all works associated to PKI, communism, and leftist groups. One of famous example of this practice was a censorship for Pramoedya Ananta Toer's writings. He jailed in Soekarno's era for highlighting the discrimination against Chinese minority groups in the country through his writings. Again, he jailed by the order of Soeharto during the PKI's coup in 1965<sup>183</sup> as he was a part of Lekra<sup>184</sup>, a loose affiliation of leftist' art and culture.

New Order's control over academic life had gone so far. The impact of the control over what government allows and what government prohibit resulted to the availability of academic sources such social science texts, novels, recent analysis of contemporary political issues, etc.<sup>185</sup> The wave of oppression did not stop there, Soeharto did not only ban communism teaching in spreading but also all teachings that associate or close by with it such socialism and Marxism-Leninism. A living witness of this oppression is Dr. Arief Budiman (born Soe Hok Dijn), a Chinese Indonesia sociologist at Universitas Kristen Satya Wacana (UKSW). In 1988, he was accused for

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<sup>183</sup> See further at Al-Jazeera, 2017, *Pramoedya Ananta Toer: Why You Should Know Him*, <https://www.aljazeera.com/indepth/features/2017/02/pramoedya-ananta-toer-170206053453639.html>, accessed on 29<sup>th</sup> of January 2019 at 8:13 pm

<sup>184</sup> Lekra or Lembaga Kebudayaan Rakyat (Institute for the People's Culture) was a social movement that associated with the PKI. It was established in 1950 by A. S. Dharta, M. S. Ashar, Henk Ngantung, Arjuna, Joebaar Ajob, Sudharnoto, and Njoto. After the PKI's Coup, Lekra was dissolved and all its attainments were banned even destroyed. See further at Prih Suharto, 2017, *Lekra dan Geger*. Badan Bahasa Kemendikbud, [http://badanbahasa.kemdikbud.go.id/lamanbahasa/sites/default/files/Hasil%20Diskusi\\_8.pdf](http://badanbahasa.kemdikbud.go.id/lamanbahasa/sites/default/files/Hasil%20Diskusi_8.pdf), accessed on 29<sup>th</sup> of January 2019 at 7:15 pm

<sup>185</sup> Asian Forum for Human Rights and Development, 1995, *Stability and Unity on a Culture of Fear*, Bangkok, Forum Asia, p. 138 – 146

teaching Marxism to his students by a university alumni group. As he responded “How can you know if someone is a Marxist if you don’t know what Marxist is? I don’t and never suggest my student to follow Marxism. I teach it because I think it is a part of study of development theoretically and ideologically”.<sup>186</sup>

Tracking back to the PKI’s Coup in 1965, New Order bans Chinese as officials thought that the Coup attempt received support directly from China<sup>187</sup> through Chinese-Indonesian intermediaries.<sup>188</sup> The ban resulted into the shutdown of all Chinese-language schools in 1966 and banned of all imported goods with Chinese words in it through a series of government decrees in 1978 – 1979.<sup>189</sup> Thus, Dr. Arief Budiman was a victim of this oppression due to his Chinese ethnicity.

Soeharto’s control over academic life through censorship and limitation on teachings was really harming. People were shadowing with fear. Many books were banned; criticism was limited; student’s organization was controlled; it was truly against human rights. Some famous historical books banned in the New Order are as follows:

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<sup>186</sup> Saunders, *Op.Cit*, p. 62; See also Marcia Audita and Ikhwanul Habibi, 2018, *Kehidupan Arief Budiman di Usia Senja*, <https://kumparan.com/@kumparannews/kehidupan-kakak-soe-hok-gie-di-usia-senja>, accessed on 29<sup>th</sup> of January 2019 at 9:55 pm

<sup>187</sup> China is one biggest communist country in the world. Both China and Indonesia have had into a close relationship in Soekarno’s era. Soekarno put China as his inspiration in ideology to build the country. See further at Satriono Priyo Utomo, “Indonesia, Tiongkok dan Komunisme, 1949 – 1965”, *Indonesian Perspective*, Volume 2(1), 2017, Semarang, Universitas Diponegoro, p. 70 – 74

<sup>188</sup> Saunders, *Op.Cit*, p. 64

<sup>189</sup> Saunders, *Op.Cit*.

**Table 2. List of Prohibited Books in New Order**

No.	Title	Description
1.	<i>Tan Malaka: Pergulatan Menuju Republik, Vol. 1</i> (Tan Malaka: The Struggle for the Republic)	The book suspected in spread of Marxism-Leninism
2.	<i>Amerika Serikat dan Penggulingan Soekarno</i> (The United States and the Overthrow of Sukarno)	Translated book by Peter Dale Scott of American Scholar on the 1965 PKI's Coup and its aftermath
3.	<i>Kehormatan Bagi Yang Berhak: Bung Karno Tidak Terlibat G30S/PKI</i> (Respect for Those Who Have the Right: Bung Karno was not Involved in G30S/PKI)	Manai Sophiaan of PNI leader writing on his thought that Soekarno was not involved in the 1965 PKI's Coup
4.	<i>Sang Pemula</i> (The Initiator)	Pramoedya Ananta Toer's writing on the Tirto Adhi Suriyo political biography
5.	<i>Nyanyi Sunyi Seorang Bisu</i> (The Lonely Song of a Mute)	1995 Pramoedya Ananta Toer's memoir describing his Buru island fourteen-years imprisonment
6.	<i>Di Bawah Lentera Merah</i> (Under the Red Lantern)	Soe Hok Gie's writing (younger brother of Dr. Arief Budiman alias Soe Hok Djin) on the late 20 <sup>th</sup> century Indonesian nationalist movement
7.	<i>Primadosa: Wimanjaya dan Rakyat Indonesia Menggugat Imperium Soeharto</i> (First Sin: Wimanjaya and the Indonesian People Accuse Soeharto's Imperium)	A book that accuses Soeharto was involved in the 1965 PKI's Coup. Wrote by Wimanjaya K. Liotohe in 1994

Among all banned books, exclude the list above, historical studies of the PKI 1965 Coup attempt are the most-banned ones. All books related to the events, precursors, and its aftermath were annihilated. All the works such memoirs and accounts of scholars and eyewitnesses related to the event were included.<sup>190</sup>

During the New Order, those who try to challenge Soeharto’s militaristic government or to organize independent political opposition were made to be the public scapegoating, aggressive campaigns, physical intimidation even torture, and imprisonment. Academic community were the prominent target and the most prosecuted ones as they have capabilities to doctrine people to reveal the truth.<sup>191</sup> Although the government had expanded the political space for dissent in the late 1980s, however, it was just a dream in practice.

Soeharto’s government used three main legal weapons against his opponents, among all of them, some are still used until now. Those are:

**Table 3. Main Legal Weapons Used to Prosecute Scholars in New Order**

No.	Legal Weapon	Legal Provision	Note
1.	The “Anti-Subversion” Law	Presidential Decree No. 11 Year 1963 on the Eradication of Subversion Activities	Used to criminalize “distort, undermine or deviate from the ideology of Pancasila” or “disseminate feelings of hostility or arouse hostility,

<sup>190</sup> See further at Iwan Awaluddin Yusuf, et. al., 2010, *Pelarangan Buku di Indonesia: Sebuah Paradoks Demokrasi dan Kebebasan Berekspresi*, Yogyakarta, PR2Media, p. 49 – 53

<sup>191</sup> Saunders, *Op.Cit*, p. 69

			disturbances or anxiety among the population”
2.	The “Spreading Hatred” Laws	Indonesian Penal Code ( <i>Wetboek van Strafrecht</i> ) Article 154, 155, and 156	Used to criminalize “public expression of hate or insult to the ruling government”
3.	The “Majesty” Laws	Indonesian Penal Code ( <i>Wetboek van Strafrecht</i> ) Article 134, 137 (1), 207, 208	Used to criminalize “deliberate disrespect” or “dissemination, display, or posting of offensive materials” for the Executive (President and Vice-President), and other government officials

Close to the end of his long 32-years regime, in the late 20s, Soeharto’s government imprisoned a 53-years old Universitas Indonesia’s Economist, Sri Bintang Pamungkas. Holding a Ph.D in economics from Iowa State University, he was sentenced to 34-months prison on 8<sup>th</sup> of May 1996, for “insulting the President” based on his remarks while he lecturing at Berlin Technological University, German, in 1995. The case begun in 1992’s campaign for legislative election represented PPP,<sup>192</sup> the government described his campaign was to blunt in criticizing. After releasing from the prison, again, he was arrested but for different charge of subversion. With lack of evidence, he was jailed for establishing an opposition party namely Partai Uni Demokrasi Indonesia (PUDI) or

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<sup>192</sup> See further at Wan Ulfa Nur Zuhra, 2016, *Siapa Sri Bintang Pamungkas, Sosok Yang Mekar Karena Makar?* <https://tirto.id/siapa-sri-bintang-pamungkas-sosok-yang-mekar-karena-makar-b6Bg>, accessed on 30<sup>th</sup> of January 2019 at 10:15 pm

Indonesian Uni Democratic Party. He, then, released after the fall of Soeharto's regime by its successor of B. J. Habibie in 1999.<sup>193</sup>

The long 32-years regime of Soeharto had met its end after the series of human rights violations, decline of democracy, and crisis of economy resulted to a massive-nationwide demonstration in 12<sup>th</sup> of May 1998. At that time, Soeharto was on an official state visit to Egypt. Upon his arrival on 18<sup>th</sup> of May 1998, he offered to resign on 2003 with a proposal of cabinet reshuffle. However, people rejected his proposal as well as its new appointed cabinet to step back from his supporting line. Finally, the long 32-years of Soeharto's regime came to its end. Soeharto announced his resignation on 21<sup>st</sup> of May 1998 and the new era called Reformation begun since then.<sup>194</sup>

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<sup>193</sup> Wan Ulfa Nur Zuhra, *Ibid.*

<sup>194</sup> See further at Vickers, *Op.Cit*, p. 203 - 207

**Figure 12. Resignation of Soeharto on 21<sup>st</sup> of May 1998**



Source: <https://nasional.kompas.com/read/2018/05/21/06480851/21-mei-1998-saat-soeharto-dijatuhkan-gerakan-reformasi?page=all>

### **3. Reformation Era and the New Chapter of Indonesia**

Soeharto was succeeded by his last Vice-President, Bacharuddin Jusuf Habibie or Habibie. Since then, Indonesia experienced extensive legislative changes in the country. Habibie's short time of Presidential office focused more on the effort to lift economy of Indonesia out from the Asian financial crisis.<sup>195</sup> On the other hand, he also restored the freedom back to

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<sup>195</sup> Indonesia faced the Asian financial crisis in July 1997. It was all started by the attack on currencies. Thailand was the first one who suffered the attack. Thai Baht (THB) was depreciated in July 1996 and contagiously impacted to the Indonesian Rupiah (IDR) the next year later. Following the THB depreciation, Bank Indonesia committed a preemptive action by widening its intervention band from 8% to 12%. Due to that action, many Indonesian banks went bankrupt and the rest chose to merger to avoid the worst result. The crisis led to the massive demonstrations in Indonesia resulted to the fall of Soeharto in the following year. See further at Hong Kong Institute of Economic and Business Strategy, 2000, *Asian Financial Crisis: Causes and Development*, Hong Kong, Graphicraft Limited, p. 7 – 8

the people by lifting restriction on political parties and dissolving the Ministry of Information that was responsible for the censorship.

**Figure 13. Habibie Sworn-In as the Third President**



Source: <https://merahputih.com/post/read/sosok-bj-habibie-di-mata-tb-hasanuddin>

Habibie initiated to hold a democratic election in 1999.<sup>196</sup> Issuing many democratic legal provisions to protect freedoms, post-Soeharto's government tried to dismantle the Soeharto's barriers and its legacies. MPR held a *Sidang Istimewa* (Special Session) and issued the MPR Decree No. XVII/MPR/1998 on Human Rights. This Decree granted a freer freedom and mandated the state institutions to disseminate, respect, and protect human rights.<sup>197</sup>

The MPR Decree was a foundation to bear a new human rights law in 1999. The Law No. 39 Year 1999 was made due to the demand of human

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<sup>196</sup> O'Rourke, Kevin, 2002, *Reformasi: The Struggle for Power in Post-Soeharto Indonesia*, Sydney, Allen & Unwin, p. 145

<sup>197</sup> Article 1 of the MPR Decree No. XVII/MPR/1998 on Human Rights



rights in transition period. This Law, which still exists until now, guarantees and protect human rights way better than before it was created. Under the Human Rights Law 1999, the Article 23 (2) gives a broad enjoyment to the freedom of expression. Habibie later passed the first amendment of the 1945 Constitution in 1999 which the changes were focused on the legislative and executive Articles.<sup>198</sup> There were not many important events happened during Habibie's rule. His short period was ended in 20<sup>th</sup> of October 1999 and was succeeded by Abdurrahman Wahid who colloquially known as Gus Dur.

**Figure 14. Abdurrahman Wahid or Gus Dur**



Source: <http://www.hariansejarah.id/2017/05/biografi-presiden-abdurrahman-wahid.html>

As a former journalist, Gus Dur fought for press freedom during his 2-years presidential office. Since the issuance of the Law No. 40 Year 1999 on Press in Habibie's period, press freedom was not free. Gus Dur dissolved

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<sup>198</sup> The first amendment of the 1945 Constitution of the Republic of Indonesia was happened in on 14<sup>th</sup> – 21<sup>st</sup> of October 1999. The amendment made changes on Article 5, Article 7, Article 9, Article 13, Article 14, Article 15, Article 17, Article 20, and Article 21.

*Departemen Penerangan* (Information Department) to give a broad freedom for press. It was because the Department has an authority to revoke the publishing permit and media banning.<sup>199</sup>

Period of Gus Dur was full of tolerance. Gus Dur often laughed at all comments and critics directed to him. His sense of humour made him easy-going with all of it.<sup>200</sup> However, due to the radical policies he made for such changing ministries without his Vice-President of Megawati Soekarnoputri's approval and revoke the MPRS Decree No. XXV/MPRS/1966 on the Dissolved of the PKI, Statement as the Prohibited Organization in the Entire Territory of the Republic of Indonesia, and Prohibition on Every Activity to Spread or to Develop Communism/Marxism-Leninism Teachings that made him left alone by his own cabinet ministers. He was impeached by the MPR on 23<sup>rd</sup> of July 2001<sup>201</sup> and succeeded by his Vice-President, Megawati Soekarnoputri as the fifth President of the Republic of Indonesia.

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<sup>199</sup> Epran Aprianto, "Peran Abdurahman Wahid dalam Politik Indonesia (1999 – 2001)", *Jurnal Intelektualita*, Volume 5(2), 2016, Palembang, UIN Raden Fatah, p. 136

<sup>200</sup> Tri Agus Siswiharjo, 2018, *Cara Gus Dur Mengkritik dan Menjawab Kritik Sambil Menertawakan Diri Sendiri*, Mojok.Co, <https://mojok.co/tas/esai/cara-gus-dur-mengkritik-dan-menjawab-kritik-sambil-menertawakan-diri-sendiri/>, accessed on 31<sup>st</sup> of January 2019 at 9:15 pm

<sup>201</sup> Sunarno, "Pemberhentian Presiden Republik Indonesia Dari Masa ke Masa", *Jurnal Wacana Hukum*, Volume 9(2), 2011, Palembang, Univertas Sriwijaya, p.. 88 – 89

**Figure 15. Megawati Soekarnoputri of the 5<sup>th</sup> President**



Source: <http://balagia.blogspot.com/2017/09/reformasi-masa-pemerintahan-megawati.html>

Diah Permata Megawati Setiawati Sukarnoputri or Megawati is the first woman President ever in Indonesia and the sixth to lead a Muslim-majority country in the world.<sup>202</sup> She was in office for president from 23<sup>rd</sup> of July 2001 – 20<sup>th</sup> of October 2004. Her presidency was an icon for the rise of Soeharto's regime opposition. However, her presidency gave not much significant developments even went to indecisiveness, unclear ideological direction, and lack of action on important policy issues.<sup>203</sup> Besides, a famous and prominent human rights violation case occurred few months before her fall of presidency, that was the case of the assassination of Human Rights activist, Munir.

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<sup>202</sup> The first is Benazir Bhutto of Pakistan's Prime Minister (1988 – 1990 and 1993 – 1996), the second is Khaleda Zia of Bangladesh's Prime Minister (1991 – 1996 and 2001 – 2006), the third is Tansu Çiller of Turkey's Prime Minister (1993 – 1996), the fourth is Sheikh Hasina Wajed of Incumbent Bangladesh's Prime Minister (2009 – Present), and the fifth is Mame Madior Boye of Senegal's Prime Minister.

<sup>203</sup> Lindsey, Tim, 2008, *Indonesia: Law and Society*, Australia, The Federation Press, p. 17 – 19

**Figure 16. Munir, A Human Rights Activist**



Source: <https://netz.id/news/2016/10/27/00516-01016/1004271016/istana-terima-salinan-tpf-munir>

Munir Said Thalib was an Indonesia's prominent and foremost human rights and anti-corruption activist. It was recorded that he accused the Indonesian military for violating human rights in East Timor and other provinces such Papua and Aceh. He helped an elderly labourer from being beaten by security official until his hand fractured by it. Predominantly, in 2001, he investigated the involvement of *Komando Pasukan Khusus* (KOPASSUS) or the Indonesian Army Special Forces role in 1998 case of kidnapping until he received many threats including death threat and bomb.<sup>204</sup>

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<sup>204</sup> Dooley, Brian. (2017). *Munir: The Indonesian Assassination Case That Won't Go Away*. Huffpost. [https://www.huffingtonpost.com/entry/munir-the-indonesian-assassination-case-that-wont\\_us\\_59a9d012e4b0c50640cd5f4c](https://www.huffingtonpost.com/entry/munir-the-indonesian-assassination-case-that-wont_us_59a9d012e4b0c50640cd5f4c). Accessed on 3<sup>rd</sup> of February 2019 at 3.15 pm

Munir was co-founded two prominent human rights organization in the country including KONTRAS<sup>205</sup> and IMPARSIAL,<sup>206</sup> and Indonesian Human Rights Watch. In 2004, few months before the end of Megawati's period, Munir was found dead on the flight from Jakarta to Amsterdam to pursue his master's degree on International Law and Human Rights in Utrecht University, The Netherland.<sup>207</sup> He was poisoned with arsenic by the accused-Pilot of Garuda Indonesia, Pollycarpus Budihari Priyanto, and carried out to autopsy by the Dutch officials in the Netherland.<sup>208</sup> Megawati was failed to reveal the Munir case and she was beaten by Susilo Bambang Yudhoyono (SBY) on the 2004 presidential election and re-elected again on the 2009 presidential election.

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<sup>205</sup> KONTRAS is an abbreviation for *Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan* (Commission for Disappeared and Victims of Violence). This Non-Governmental Organization (NGO) deals with missing persons' cases as a response to the practice of violence that continues to occur and claimed many victims. Munir was one of the founders and sadly one of its victims. See further at KONTRAS, *Company Profile*, <https://kontras.org/en/company-profile/>, accessed on 3<sup>rd</sup> of February 2019 at 3:30 pm

<sup>206</sup> IMPARSIAL is a social organization which engaged in supervising and investigating of human rights violations in Indonesia. The name IMPARSIAL is taken from the word 'IMPARTIAL' which means a view that glorifies the equality of rights of individual in the diversity of background toward justice, with special attention to those who are less fortunate. See further at IMPARSIAL, *Tentang Imparsial*, <http://www.imparsial.org/profil/tentang-imparsial/>, accessed on 3<sup>rd</sup> of February 2019 at 3:31 pm

<sup>207</sup> Anonymous, 2006, *Munir Murder Conviction Quashed*, BBC News, <http://news.bbc.co.uk/2/hi/asia-pacific/5405952.stm>, accessed on 3<sup>rd</sup> of February 2019 at 3:33 pm

<sup>208</sup> Tiarna Siboro and Muningar Sri Saraswati, 2004, *Rights Campaigner Munir Dies on Plane*, The Jakarta Post, <https://web.archive.org/web/20041116123612/http://www.thejakartapost.com/detailweekly.asp?fileid=20040908.@01>, accessed on 3<sup>rd</sup> of February 2019 at 3:45 pm

**Figure 17. Susilo Bambang Yudhoyono or SBY**



Source: <https://www.merdeka.com/peristiwa/cerita-di-balik-pertemuan-terakhir-sby-dengan-tni.html>

SBY took the presidential office since 20<sup>th</sup> of October 2004 until 20<sup>th</sup> of October 2014. His 10-years of presidency has failed to live up his promises in solving the past human rights violation cases and the murder of Munir case as he promised during his campaign in 2004. However, many scholars appreciated SBY for protecting press freedom in the country.<sup>209</sup> What SBY did to deal with critics directed to him was only complaining. SBY did not even use repressive means against the critics.<sup>210</sup>

One year after he took the office, SBY ratified two covenants namely the ICESCR and the ICCPR into the Law. The Law No. 11 Year 2005 on the Ratification of the International Covenant on Economic, Social, and

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<sup>209</sup> Wahyu Haryo, 2014, *SBY dan Jurnalis, Benci tapi Rindu*, KOMPAS, <https://nasional.kompas.com/read/2014/09/08/07000061/SBY.dan.Jurnalis.Benci.tetapi.Rindu>, accessed on 3<sup>rd</sup> of February 2019 at 6:15 pm

<sup>210</sup> Anonymous, 2014, *Kebebasan Pers Diapresiasi Selama 10 Tahun Pemerintahan SBY*, Suara Pembaharuan, <https://sp.beritasatu.com/home/kebebasan-pers-diapresiasi-selama-10-tahun-pemerintahan-sby/64069>, accessed on 3<sup>rd</sup> of February 2019 at 6:22 pm

Cultural Rights and the Law No. 12 Year 2005 on the Ratification of the International Covenant on Civil and Political Rights. The consequence on these ratifications is to seek Indonesia's government effort in upholding the basic human rights. Substantially, this is one step forward for the enforcement of human rights in Indonesia.

Calling back to the critics, during his 10-years of presidential rule, SBY received many critics even the aggressive ones. One very famous critic to SBY was when a cow brought into a demonstration that took place on 28<sup>th</sup> of January 2010. The black cow with "SiBuYa" word painted on its body dragged by Yosep Rizal, an activist. was directed to mock SBY and to request him to step down the presidential office. Even worse his official presidential picture was put on its butt and burned it into ashes. However, SBY never prosecuted Yosep Rizal who initiated the "cow" demonstration and other people who criticize him, including scholars.<sup>211</sup> What he did only complaining the critics but never choosing any repressive means against it. This shows how mature and wise SBY was in ruling the presidency.

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<sup>211</sup> Firman Qusnulyakin, 2005, *10 Tahun Jadi Presiden, SBY Terima Ratusan Penghinaan dan Kritik*, Berita Satu, <https://www.beritasatu.com/hukum/297726-10-tahun-jadi-presiden-sby-terima-ratusan-penghinaan-dan-kritik.html>, accessed on 3<sup>rd</sup> of February 2019 at 11:12 pm

**Figure 18. A Cow with “SiBuYa” Word to Mock SBY during Demonstration**



Source: <http://www.voa-islam.com/read/indonesia/2010/02/03/3083/bila-presiden-sby-sentil-kerbau-%27sby/#sthash.Ik2HmpOd.dpbs>

On his second presidential term, in 2012, SBY passed the bill of the Law No. 12 Year 2012 on Higher Education. This Law stipulates the freedom of academic which under the Second Chapter of Science of Knowledge and Technology Development, Academic Freedom; Academic Assembly Freedom; and Autonomy of Science are regulated and protected. Article 8 of the Law defines Academic Freedom as a scientifically and theoretically in Higher Education nature and must be free from political interference<sup>212</sup>. However, in practice, it was often disturbed by political interferences. Although, the Article 19 of the ICCPR clearly mandates that everyone has the right to hold opinion and to express it without any interference.

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<sup>212</sup> See Article 8 and 9 of the Law No. 12 Year 2012 on Higher Education



### C. Jokowi's Democratic Decline and Academic Freedom

SBY ended his second term as the President of the Republic of Indonesia in 2014 and replaced by Joko Widodo as the seventh President of the Republic of Indonesia. Joko Widodo or Jokowi was named president-elect on 22<sup>nd</sup> of July 2014 after defeating Prabowo Subianto as his opponent who later disputed the result to the *Mahkamah Konstitusi* (MK) or Constitutional Court of the Republic of Indonesia and withdrew from the competition before the count was finished.<sup>213</sup> Jokowi is a low-profile person and a former governor of the Capital City Jakarta before he goes to 2014 presidential election. Because of his down-to-earth personality and his style of campaign which is known as a *Blusukan* (impromptu visit), he won many people hearts thereof. However, within his 4 years of presidential term office, many people argued that his regime turns to be an authoritarian leader with unclear ideological direction.<sup>214</sup>

As time goes by, Jokowi's regime becomes anti-critics to the public. DPR proposed an article of "Majesty" law which imprison individual who insults President in the public with 5 years of imprisonment on Article 263 and 264 of the Bill of Criminal Code. Furthermore, it was getting worse when the Police issued the Chief Police Circular Letter No. SE/6/IX/2015 on the Handling of Hate Speech. Looking back to New Order, Soeharto ever used such these regulations to 'fight' back his political opponents. Fortunately, those

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<sup>213</sup> Thatcher, Jonathan and Kanupriya Kapoor, 2014, *Indonesian President-Elect Jokowi Calls for Unity after Bitter Election*, Reuters, <https://www.reuters.com/article/us-indonesia-election-idUSKBN0FQ23F20140723>, accessed on 4<sup>th</sup> of February 2019 at 2:52 pm

<sup>214</sup> Power, Tom, 2018, *Jokowi's Authoritarian Turn*, New Mandala, <https://www.newmandala.org/jokowis-authoritarian-turn/>, accessed on 4<sup>th</sup> of February 2019 at 3:04 pm

laws were canceled by the MK because it against the Constitution, the President is treated equal before the law, and the Articles are so vulnerable to be abused.<sup>215</sup> Jokowi's regime is argued to take an authoritarian turn and goes further than his predecessor in post-Soeharto periods in treating executive bodies, law enforcement bodies, and security apparatus to achieve their personal agendas.<sup>216</sup>

**Figure 19. Joko Widodo or Jokowi**



Source: <https://politik.rmol.co/read/2017/05/19/291981/Bubarkan-HTI-Dan-Gebuk-PKI.-Jokowi-Lahirkan-Kembali-Rezim-Otoriter->

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<sup>215</sup> Constitutional Court Decision No. 013-022/PUU-IV/2006 canceled Article 134, Article 136 bis, and Article 137 from the Indonesian Penal Code and decided that these Articles have no legal power.

<sup>216</sup> See further at Lindsey, Tim, 2017, *Is Indonesia Sliding Towards a 'Neo-New Order'?* Indonesia at Melbourne, <http://indonesiaatmelbourne.unimelb.edu.au/is-indonesia-sliding-towards-a-neo-new-order/>, accessed on 5<sup>th</sup> of February 2019 at 8:15 pm

## 1. The Blasphemy Case and Post-Ahok Polarization

The decline of democracy in Jokowi's period is believed to happen in 2016 right before the Jakarta's gubernatorial election which was held on April 2017. It was all started when an incumbent governor Basuki Tjahaja Purnama or Ahok, a Chinese-Christian, made a blasphemous comment towards Surah Al-Maidah verses 51.<sup>217</sup> To help the case, *Majelis Ulama Indonesia* (MUI) or Indonesian Ulema Council endorsed the charge by issuing its standing position.<sup>218</sup> This action led to an establishment of *Gerakan Nasional Pengawal Fatwa MUI* (GNPF-MUI) or National Movement to Safeguard the MUI Fatwa and mounted to a series of demonstrations on 4<sup>th</sup> of November 2016 ('411') and 2<sup>nd</sup> of December ('212') 2016. These movement have marked the rise of a new political force by Islamic populist in Indonesia which is known as '212 Movement'.<sup>219</sup>

The Ahok's blasphemy case begun when a former Indonesian private lecturer, Buni Yani, uploaded a video of Ahok's comment on Surah Al-Maidah verses 51 on his social media. The video triggered the series of demonstrations and led to the polarization. Surprisingly, Buni Yani got reported to the Police and found guilty for breaching Article 28 (2) of the ITE Law for disseminating information which contains hatred or hostility

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<sup>217</sup> Rina Atriana and Aditya Mardiasuti, 2017, *Hakim: Ahok Merendahkan Surat Al-Maidah 51*, DetikNews, <https://news.detik.com/berita/d-3496149/hakim-ahok-merendahkan-surat-al-maidah-51>, accessed on 6<sup>th</sup> of February 2019 at 9:15 pm

<sup>218</sup> Indah Mutiara Kami, 2016, *MUI Nyatakan Sikap Soal Ucapan Ahok Terkait Al-Maidah 51, Ini Isinya*, DetikNews, <https://news.detik.com/berita/d-3318150/mui-nyatakan-sikap-soal-ucapan-ahok-terkait-al-maidah-51-ini-isinya>, accessed on 6<sup>th</sup> of February 2019 at 9:16 pm

<sup>219</sup> Dhoni Setiawan, 2016, *212 Rally, The Jakarta Post*, <https://www.thejakartapost.com/news/2016/12/03/212-rally.html>, accessed on 6<sup>th</sup> of February 2019 at 9:18 pm

based on *Suku, Agama, Ras, dan Antargolongan* (SARA) or Ethnicity, Religion, Race and Groups.<sup>220</sup> Historically, Buni Yani was former Ahok supporter in the 2012 Jakarta's gubernatorial election as Jokowi's running-man. On the other hand, he was a researcher at Leiden University and was a former journalist at the Voice of America (VOA) and Australian Associated Press (AAP).<sup>221</sup>

Year 2017 was a year of political tense in Indonesia between the Islamic Political issues and Indonesian governmental affairs.<sup>222</sup> The aftermath of Ahok case led to an issuance of a policy made by Jokowi to crack down what so-called 'radical Islam'. The policy was the Regulation-In-Lieu of Law No. 2 Year 2017 on the Changes of Law No. 17 Year 2013 on Community Organization or PERPPU<sup>223</sup> Ormas. The first victim of this policy went to Hizbut Tahrir Indonesia (HTI) as its permission was revoked. Despite the HTI case, this policy has wrecked the peace of religious life in Indonesia and SARA become more intense to be talked than ever in the country. Even worse, it goes to academic life which many scholars have been accused for being 'radical' and 'intolerant' of supporting the HTI.

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<sup>220</sup> Wahyudi Soeriaatmadja, 2017, *Man Who Uploaded Controversial Video of Ex-Jakarta Governor Ahok Sentenced to Jail*, Strait Times, <https://www.straitstimes.com/asia/se-asia/man-who-uploaded-controversial-ahok-video-sentenced-to-jail>, accessed on 8<sup>th</sup> of February 2019 at 00:44 am

<sup>221</sup> Rizal, 2016, *5 Fakta Unik Tentang Buni Yani yang Gak Banyak Diketahui Orang*, IDN Times, <https://www.idntimes.com/news/indonesia/rizal/5-fakta-tentang-buni-yani-yang-gak-banyak-diketahui-orang/full>, accessed on 8<sup>th</sup> of February 2019 at 00:58 am

<sup>222</sup> Hasbi Aswar, "Destructing the Islamism in Indonesia: Joko Widodo Policy and Its Controversy", *International Journal of Malay-Nusantara Studies*, Volume 1(1), 2018, Makassar, Universitas Hasanuddin, p. 63

<sup>223</sup> PERPPU is an abbreviation for Peraturan Pemerintah Pengganti Undang-Undang or Regulation-In-Lieu of Law/Interim Law

**Figure 20. Jokowi and PERPPU Ormas Controversy**



Source: <https://www.aktual.com/soal-perppu-ormas-presiden-jokowi-negara-berani-kendalikan-warganya/>

One major example is a case of a hardline leader *Front Pembela Islam* (FPI) or Islamic Defenders Front, Habib Rizieq Shihab. Habib Rizieq was so vocal against Ahok case and was the one who initiated the ‘212 Movement’. Habib Rizieq’s opponents who literally are pro-Ahok, made a report to the Police under the pornography allegation.<sup>224</sup> Habib Rizieq found innocence after Hermansyah, who is a telecommunication expert from ITB, was invited as an expert in the trial and gave his expert statement that the alleged pornography chat is fake. Because of his statement, Hermansyah was attacked by unidentified people on Jagorawi highway.<sup>225</sup>

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<sup>224</sup> Kapoor, Kanupriya, 2017, *Indonesia names Islamist Leader a Suspect in Pornography Case*, Reuters, <https://www.reuters.com/article/us-indonesia-politics-islamist-idUSKBN18P0ZX>, accessed on 7<sup>th</sup> of February 2019 at 9:15 am

<sup>225</sup> Anonymous, 2017, *Telecommunications Expert Assaulted on Jagorawi Toll Road*, The Jakarta Post, <https://www.thejakartapost.com/news/2017/07/10/telecommunications-expert-assaulted-on-jagorawi-toll-road.html>, accessed on 7<sup>th</sup> of February 2019 at 9:44 am

**Figure 21. Attack on Hermansyah of ITB's Telecommunication Expert**



Source: <https://suaranasional.com/2017/07/13/polisi-pidanakan-yang-kaitkan-pembacokan-hermansyah-dengan-habib-rizieq/>

Persecution against Habib Rizieq and Attack on Hermansyah have injured the academic freedom in Indonesia. Both are scholars who, according to their ways, fight for what they believed that is true. Habib Rizieq fought against Ahok's blasphemous comment and asked him to be jailed. Following that action, Habib Rizieq was persecuted by unknown people for pornography chat he made with Firza Husein. While Hermansyah was brutally attacked by unknown after revealing the pornography chat is a fake. Although the correlation between the attack and his expert comment on the trial are still debatable, however, scholars must be protected.

Life in the country has been polarized ever since. Those who are against Ahok and pro-HTI often called as 'radical', 'intolerant' even 'Anti-Pancasila'. Vice versa for those who comment Habib Rizieq case often gets

intimidation even persecution.<sup>226</sup> Data which compiled by Southeast Asia Freedom of Expression Network (SAFE NET) for the first semester of 2017 shows that, at least, there are 59 people have been subjected to intimidation after criticizing HTI. Out of all cases, 34 took place after Habib Rizieq named as a suspect for pornography chat on May 2017.<sup>227</sup> All of them were alleged to violate Article 28 (2) of the Law No. 11 Year 2008 on Information and Electronic Transaction or the ITE Law which stipulates:

*“Setiap orang dengan sengaja dan tanpa hak menyebarkan informasi yang diajukan untuk menimbulkan rasa kebencian atau permusuhan individu dan/atau kelompok masyarakat tertentu berdasarkan atas suku, agama, ras, dan antargolongan (SARA). (Every person who intentionally and without the right to disseminate information submitted to cause hatred or hostility of certain individuals and/or groups based on ethnicity, religion, race, and intergroup.”*

This action of persecution has spread evenly throughout the country and even targets scholars.

Not only common scholars who have been experienced the ‘Ahok Effect’, but also the Islamic scholars. At least few prominent Islamic scholars experienced threats before, during, and even after the preach.<sup>228</sup>

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<sup>226</sup> Lalu Rahardian, 2017, *The Ahok Effect, Warga Agresif Buru ‘Penista Agama’*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20170527151727-20-217678/the-ahok-effect-warga-agresif-buru-penista-agama>, accessed on 7<sup>th</sup> of February 2019 at 9:44 pm

<sup>227</sup> Marselinus Gual, 2017, *Korban Persekusi ‘The Ahok Effect’ Tercatat Mencapai 59 Orang*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20170601163649-20-218744/korban-persekusi-the-ahok-effect-tercatat-mencapai-59-orang>, accessed on 7<sup>th</sup> of February 2019 at 9:14 pm

<sup>228</sup> See further at Suriyanto, 2018, *Sebut Ada Ancaman, UAS Batalkan Ceramah di Sejumlah Daerah*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20180903081745-32-327032/sebut-ada-ancaman-uas-batalkan-ceramah-di-sejumlah-daerah>, accessed on 8<sup>th</sup> of February 2019 at 10:05 am

They religious freedom, which here can be linked to academic freedom to disseminate knowledge on religion, were violated by some groups who rejected their talk or even banned them to come to their places.<sup>229</sup> It was basically because of the scholars trying to emphasize the believers to obey Surah Al-Maidah verses 51 which it insists believer to not choose non-moslem to be their leader. These scholars were accused to be Anti-Pancasila. Some people argued that these type of preaches be backed up by opponent political interests due to 2019 presidential election. As the result, government took a stand to limit the preacher not to talk about politics on their talks.<sup>230</sup> The issues of the rise of PKI, Anti-Pancasila group, establishing *Khilafah*<sup>231</sup> country is appeared to the surface.

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<sup>229</sup> See further at Yusuf Asyari, 2018, *Felix Siauw Ditolak Ceramah di Manado, Ini Alasannya*, JawaPos.Com, <https://www.jawapos.com/nasional/23/02/2018/felix-siauw-ditolak-ceramah-di-manado-ini-alasannya>; Taufik Budi, 2018, *GP Ansor Tolak Ustad Abdul Somad Ceramah di Jepara*, OkeNews, <https://news.okezone.com/read/2018/08/30/512/1943542/gp-ansor-tolak-ustadz-abdul-somad-ceramah-di-jepara>, accessed on 8<sup>th</sup> of February 2019 at 10:10 am

<sup>230</sup> See further at Sri Lestari, 2017, *Cegah Ceramah Kontroversial di Televisi, MUI dan KPI Siapkan 'Aturan Bersama'*, BBC Indonesia, <https://www.bbc.com/indonesia/indonesia-40808097>; Anonymous, 2018, *Menag Ingatkan Ulama Tak Ceramah Politik di Masjid*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20180418214531-32-291844/menag-ingatkan-ulama-tak-ceramah-politik-di-masjid>; Gloria Safira Taylor, 2018, *Polisi Minta Ceramah Abdul Somad Tak Bahas Politik*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20180909112421-20-328877/polisi-minta-ceramah-abdul-somad-tak-bahas-politik>, accessed on 8<sup>th</sup> of February 2019 at 10:15 am

<sup>231</sup> Islamically, *Khilafah* is a concept of state according to Al-Qur'an and As'Sunnah. This concept is used in Islamic country as the basic concept of the state system. The leader of the *Khilafah* is a *Khalifah*. After the death of Prophet Muhammad (PBUH), the role of the leader was given to his companion, Abu-Bakr Ash-Shiddin, as the first *Khalifah* or Caliph. See further at Abd. Rahim, "Khalifah dan Khilafah Menurut Al-Quran", *Jurnal Studia Islamika*, Volume 9(1), 2012, Jakarta, UIN Syarif Hidayatullah, p. 20 – 22



## 2. Jokowi in Indonesia's 'Neo-New Order

On March 2017, a lecturer at Jakarta's Universitas Muhammadiyah Prof. Dr. Hamka (UHAMKA), Alfian Tanjung, named as suspect after accusing of Jokowi's inner circle are ex-PKI members. Alfian claimed that those who he accused to be former members of PKI had a meeting in *Istana Merdeka* or State Palace and claimed that PKI members had "control" over the palace.<sup>232</sup> He made his claim because of Jokowi's political party of *Partai Demokrasi Indonesia Perjuangan* (PDIP) or Indonesian Democratic Party of Struggle have ever conducted short course with the Communist Party of China (CPC)<sup>233</sup> on September 2012. Moreover, public was shocked by when Jokowi had CPC members on April 2016 in Indonesia at State Palace of Jakarta.<sup>234</sup> Few months later, Jokowi received Secretary-General of Communist Party of Vietnam (CPV)<sup>235</sup> on August 2017. After being reported by Presidential Chief of Staff Teten Masduki, Alfian found guilty for hate speech delict and sentenced to 2 years of imprisonment.<sup>236</sup>

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<sup>232</sup> Anonymous, 2017, *Lecturer Named Hate Speech Suspect After Throwing Accusation at Jokowi's Inner Circle*, The Jakarta Post, <https://www.thejakartapost.com/news/2017/05/30/lecturer-named-hate-speech-suspect-after-throwing-accusations-at-jokowis-inner-circle.html>, accessed on 7<sup>th</sup> of February 2019 at 10:34 pm

<sup>233</sup> Yulistyo Pratomo, 2012, *Perkuat Kaderisasi, PDIP Belajar dari Partai Komunis China*, Merdeka, <https://www.merdeka.com/politik/perkuat-kaderisasi-pdip-belajar-dari-partai-komunis-china.html>, accessed on 7<sup>th</sup> of February 2019 at 11:44 pm

<sup>234</sup> Ikhwanul Khabibi, 2016, *Presiden Jokowi Temui Perwakilan Partai Komunis China*, DetikNews, <https://news.detik.com/berita/d-3187170/presiden-jokowi-temui-perwakilan-partai-komunis-china>, accessed on 7<sup>th</sup> of February 2019 at 11:55 pm

<sup>235</sup> Fabian Januarius Kuwado, 2017, *Jokowi Terima Sekjen Partai Komunis Vietnam di Istana*, Kompas.Com, <https://nasional.kompas.com/read/2017/08/23/11132251/jokowi-terima-sekjen-partai-komunis-vietnam-di-istana>, accessed on 8<sup>th</sup> of February 2019 at 00:05 am

<sup>236</sup> Priska Sari Pratiwi, 2018, *Kasasi Ditolak MA, Alfian Tanjung Tetap Dihukum 2 Tahun*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20180608150323-12-304599/kasasi-ditolak-ma-alfian-tanjung-tetap-dihukum-2-tahun>, accessed on 8<sup>th</sup> of February 2019 at 00:12 am

Legally speaking, to have a relation with any form of communism or Marxism-Leninism teachings is prohibited under the MPRS Decree No. XXV.MPRS/1966. Based on Article 7 of the Law No. 12 Year 2011 on Statutory, the position of MPR Decree is right below the 1945 Constitution of the Republic of Indonesia. Constitutionally, the MPR Decree is still available and has a force power. On the consideration point a of the MPR Decree, the teaching of Communism/Marxism-Leninism is against the Pancasila. Article 1 of the Decree emphasizes the prohibition of the teaching inside the state's territory. What Jokowi and the government have done with CPC and CPV were basically discussing for the international relations. The question is, should the government meet the communist parties' members rather than the official foreign affairs of the country?

The wave of 'Ahok Effect' stayed still and found other victims. In the mid of 2018, a Professor of Pancasila at UNDIP Semarang was suspended from his teaching post because of his statements on social media of supporting HTI.<sup>237</sup> Suteki is known as he often updates status on Facebook regarding the *Khilafah* and Pancasila. As he is a Professor of Pancasila, he has a capacity to speak on Pancasila even to compare it with *Khilafah* teachings. He must have academic standing in saying that point.

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<sup>237</sup> Damar Sinuko, 2018, *Diduga Pro-HTI, Guru Besar Undip Prof Suteki Dinonaktifkan*, CNN Indonesia, <https://www.cnnindonesia.com/nasional/20180606222408-20-304123/diduga-pro-hti-guru-besar-undip-prof-suteki-dinonaktifkan>, accessed on 9<sup>th</sup> of February 2019 at 7:15 pm

Figure 22. Suteki's Controversial Case on Academic Freedom



Source: <http://koran.humas.ugm.ac.id/files/35035/image3.jpg>

Similar to Suteki, 4 lecturers at both Surabaya's universities of ITS and UNAIR got into the same trouble for supporting HTI.<sup>238</sup> Professor of Marine Technology Daniel M. Rosyid, Head of Physic Engineering Laboratory Arif Rahmadiansyah, Head of Material Engineering Master Program Lukman Noerochim, and lecturer Arif Firmansyah of UNAIR were accused to support the 'prohibited Islamic radical organisation' of HTI and escorted to dismissal. The accusation came from the statuses on social media they have posted at. As figured at **Figure 23**, they claimed that the statuses have been edited by third party to gain political benefits. However, they should not be prosecuted based on their opinions and academic freedom must be respected.

<sup>238</sup> Hilda Meilisa Rinanda, 2018, *Viral, 4 Dosen di Surabaya Tolak Pembubaran HTI*, DetikNews, <https://news.detik.com/berita-jawa-timur/d-4010598/viral-4-dosen-di-surabaya-tolak-pembubaran-hti>, accessed on 9<sup>th</sup> of February 2019 at 7:30 pm

Figure 23. Surabaya's Scholars Controversy Statuses on HTI

The figure consists of four panels, each featuring a scholar's photo, a quote, their name and affiliation, and a set of hashtags. The panels are arranged in a 2x2 grid.

- Top Left Panel:**
  - Quote:** "Pencabutan BHP HTI oleh Pemerintah jelas mengada-ada dan sebuah upaya untuk menekan kebebasan berkumpul dan menyatakan pendapat, sambil mengaburkan ancaman yg sebenarnya sudah dan sedang terjadi atas NKRI, yaitu neokolonialisme. Jadi tindakan sewenang-wenang Pemerintah atas HTI itu adalah intentionally crafted hoax sambil menyembunyikan kebenaran dari kesadaran publik."
  - Scholar:** Prof. Daniel M. Rosyid PhD, M.RINA, Guru Besar Teknologi Kelautan, Institut Teknologi Sepuluh Nopember Surabaya.
  - Hashtags:** #DukungHTIUntukIslam, #DukungHTIUntukUmat, #DukungHTIUntukDakwahdanKhilafah, #HTILayakMenang
- Top Right Panel:**
  - Quote:** "Jalannya Persidangan PTUN, Terbukti Pemerintah Sangat Lemah Argumentasi Hukum Atas Pencabutan Status BHP HTI. Bahkan Memperkuat Gambaran Abuse of Power Pemerintah Terhadap HTI Secara De Facto dan De Jure. Demi Keadilan Hukum, Tidak Ada Putusan Hakim yang Lebih Layak Selain Mengembalikan Status Awal dan Memulihkan nama baik BHP HTI."
  - Scholar:** Arif Firmansyah, SE. MM, Dosen Fakultas Ekonomi & Bisnis, Universitas Airlangga.
  - Hashtags:** #DukungHTIUntukDakwahdanKhilafah, #DukungHTIUntukIslam, #DukungHTIUntukUmat, #HTILayakMenang
- Bottom Left Panel:**
  - Quote:** "Secara substansi pemerintah tidak mampu menunjukkan ide HTI bertentangan dengan Pancasila. Jika kemudian ajaran yang dituduhkan adalah ajaran Islam, maka bukankah ini sama saja menuding agama Islam dan kaum muslimin. Oleh karena itu majelis hakim wajib mengabulkan gugatan HTI."
  - Scholar:** Andi Rahmadiansah ST. MT, Kepala Laboratorium Teknik Fisika ITS Surabaya.
  - Hashtags:** #DukungHTIUntukDakwahdanKhilafah, #HTILayakMenang, #DukungHTIUntukIslam, #DukungHTIUntukUmat
- Bottom Right Panel:**
  - Quote:** "HTI bukanlah ancaman bagi pemerintah, ancaman sesungguhnya adalah bercokolnya sistem sekuler kapitalis yang telah terbukti dimana-mana menimbulkan kesengsaraan, kerusakan dan kesenjangan yang luar biasa. Untuk itu pencabutan BHP HTI tanpa melalui prosedural hukum adalah tindakan yang sewenang-wenang. Maka sudah semestinya HTI layak menang."
  - Scholar:** Lukman Noerochim, Ph.D, Kaprodi Pascasarjana Teknik Material ITS Surabaya.
  - Hashtags:** #DukungHTIUntukDakwahdanKhilafah, #HTILayakMenang, #DukungHTIUntukIslam, #DukungHTIUntukUmat

Source: <https://news.detik.com/berita-jawa-timur/d-4010598/viral-4-dosen-di-surabaya-tolak-pembubaran-hti>

The newest case of violation of academic freedom just happened on early 2019. A former philosophy lecturer at UI got reported to the Police for blasphemous comment when narrating “*kitab suci itu fiksi*” or “holy books are fictitious” at Indonesia Lawyers Club (ILC) Television Show.<sup>239</sup> The moment was happened on April 2018, but the case is being investigated on February 2019. Rocky Gerung called for five hours of Police Interrogation

<sup>239</sup> Anonymous, 2019, *Lecturer Accused of Blasphemy Grilled for Five Hours Over the Word 'Fiction'*, The Jakarta Post, <https://www.thejakartapost.com/news/2019/02/03/lecturer-accused-of-blasphemy-grilled-for-five-hours-over-the-word-fiction.html>, accessed on 9<sup>th</sup> of February 2019 at 8:45 pm

for word ‘Fiction’ that he said during the ILC show. Rocky, Suteki, and other victims are academicians who are responsible for what they have spoken academically, not judicially.

**Figure 24. Rocky Gerung at the Police Office for Blasphemous Comment**



Source: <https://www.thejakartapost.com/news/2019/02/03/lecturer-accused-of-blasphemy-grilled-for-five-hours-over-the-word-fiction.html>

On New Order era, Soeharto controlled over ideology by censoring certain teachings and research or discussion on his governance. Such thing happened again in Jokowi’s period when the Ministry of Home Affairs, on early 2018, issued the Minister of Home Affairs Regulation No. 3 Year 2018 on the Letter of Research Notification (SKP: *Surat Keterangan Penelitian*). This Regulation went viral and attracted public attentions especially scholars.<sup>240</sup> Some Articles are controversial if it compares to the previous

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<sup>240</sup> Rio Apinino, 2018, *Aroma Pengekangan di Permendagri Soal Penelitian, Apa Saja Poinnya?* Tirto.id, <https://tirto.id/aroma-engekangan-di-permendagri-soal-penelitian-apa-saja-poinnya-cEIB>, accessed on 9<sup>th</sup> of February 2019 at 9:15 am

regulation on the Minister of Home Affairs Regulation No. 7 Year 2014 on the Changes of the Minister Regulation No. 64 Year 2011 on the Guidance of Publishing Research.

**Table 4. List of Controversial Articles on the Research Regulation 2018**

No.	Article	Note	Comment
1.	Article 2	This Article defines the purpose of the SKP is to regulate the administration of the research and to prevent the further negative impact of the research.	No clear definition on “negative impact of the research”
2.	Article 11	The authority to grant or not the Letter of Research Notification lies on the Directorate General of Politics and Government.	Again, no clear definition on “negative impact of the research” after being mentioned for six times in this Article
3.	Article 15	SKP will not be granted to the research which is not following the norm or <i>Adat Istiadat</i> or Norms and disturbing society and disintegration of <i>Negara Kesatuan Republik Indonesia</i> (NKRI) or the Unitary State of the Republic of Indonesia	This Article regulates on the substantive matters which can violate the academic freedom

Shortly after the issuance of the Regulation, Tjahjo Kumolo of Home Affairs Minister revoked the Regulation as it went controversy and received many rejections.<sup>241</sup> This new Regulation regulates too deep on substantive matters while the previous Regulation regulates only on

<sup>241</sup> Anonymous, 2018, *Batalkan Aturan Kontroversial Soal Izin Penelitian, Kemendagri Disebut ‘Salah Sejak Awal’*, BBC Indonesia, <https://www.bbc.com/indonesia/indonesia-42970888>, accessed on 9<sup>th</sup> of February 2019 at 9:33 am

administrative matters. When it comes to the substantive matters, it violates the academic freedom. Academic freedom guarantees the freedom to associate, to assemble, and to express opinions through written or oral form as mandated on Article 28 of the 1945 Constitution.<sup>242</sup>

Jokowi's regime turns to be authoritarian by how it tries to 'control' the interpretation of Pancasila ideology. The regime tries to make a single interpretation of Pancasila ideology by establishing *Badan Pembinaan Ideologi Pancasila* (BPIP) or Pancasila Ideology Development Agency.<sup>243</sup> On the New Order, the same Agency has ever established namely *Badan Pembinaan Pendidikan Pelaksanaan Pedoman Penghayatan dan Pengamalan Pancasila* (BP7) or Educational Development Board Implementation of Guidance of Pancasila Practice. This Board was dissolved during the reformation era by President Habibie as it had been used as a tool to perpetuate the Soeharto's power.<sup>244</sup> The existence of BPIP is still debatable among scholars and receives many negative comments from the society until now.

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<sup>242</sup> Article 28 of the 1945 Constitution stipulates that "The freedom to associate, to assemble, to express written and oral opinions, etc., shall be regulated by law."

<sup>243</sup> The agency is established based on the Presidential Decree No. 7 Year 2018 on the Pancasila Ideology Development Agency. This Agency was a revitalization of *Unit Kerja Presiden Pembinaan Ideologi Pancasila* (UKP-PIP) or Presidential Work Unit for the Development of Pancasila Ideology based on the Presidential Decree No. 54 Year 2017

<sup>244</sup> Rahadian P. Paramita, 2018, *Pelestarian Pancasila, dari BP-7 Hingga BPIP*, Beritagar, <https://beritagar.id/artikel/berita/pelestarian-pancasila-dari-bp-7-hingga-bpip>, accessed on 10<sup>th</sup> of February 2019 at 7:15 am

**Figure 25. BPIP Structures Inauguration by the President Jokowi**



Source: <https://www.liputan6.com/news/read/2981529/jokowi-lantik-dewan-pengarah-dan-kepala-ukp-pembinaan-ideologi-pancasila?page=1>



### 3. The Protection for Academic Freedom

Last year (2018), Indonesia celebrated the twenty-year anniversary of the falling of Soeharto's authoritarian regime called 'New Order' and the beginning of radical changes on the 1945 Constitution of the Republic of Indonesia known as Reformation Era. The reformation brought Indonesia into freer and more democratic country than ever.<sup>245</sup> Significant changes also happened on the development of academic freedom. Today, scholars can breathe peacefully in learning, teaching, or expressing their knowledges free from any interferences.

Indonesia and many countries in the world have constituted the principle of freedom of expression on the constitutions, however, Indonesia did not mention academic freedom clearly on it as like other countries do. In Europe, which mostly are developed countries, majority countries have constitutionally protected the freedom of expression and academic freedom. They have divided the academic freedom from freedom of expression and regulate it comprehensively.

Some countries in Europe do not constitutionally regulate academic freedom or even freedom of expression on its constitution. In practice, however, the government gives widely freedom with a note that it does not exceed certain norms. For example, United Kingdom (UK) does not

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<sup>245</sup> See further at Aspinall, Edward and Eve Warburton, "Indonesia: The Dangers of Democratic Regression", *Advances in Social Science, Education and Humanities Research*, Volume 129, 2017, Paris, Atlantis Press, p. 1

recognize academic freedom on its constitution<sup>246</sup> but the academician enjoys the freedom to learn, teach, do research even publish it publicly if it is not against the English Monarchy Law. On Article 10 of the UK Human Rights Act, all British have the right to express themselves freely and hold their own opinions – even if their views are unpopular or could upset or offend others.<sup>247</sup>

**Table 5. Constitutional Protection for Freedom of Expression and Academic Freedom in European Countries**

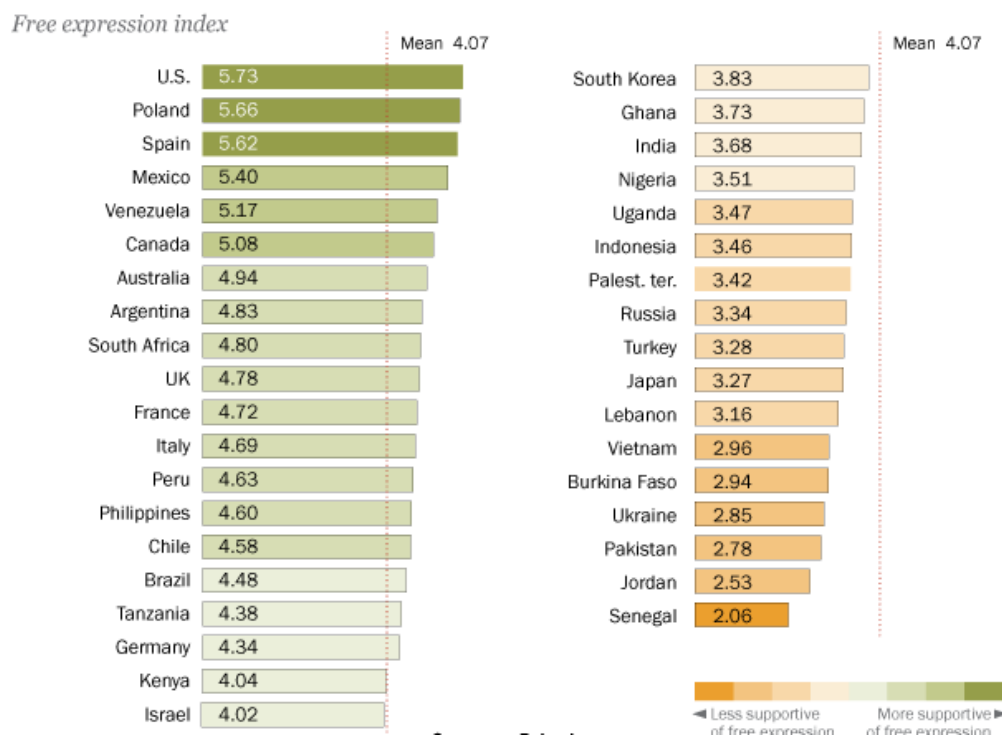
No.	Country	Freedom of Expression	Academic Freedom
1.	Austria	Yes	Yes – Research and Teaching
2.	Belgium	Yes	Yes – Teaching
3.	Denmark	Yes	Yes – Research and Artistic Creation
4.	Finland	Yes	Yes – Research, Teaching, and University Autonomy
5.	France	Yes	No Protection
6.	Germany	Yes	Yes – Research and Teaching
7.	Greece	Yes	Yes – Research, Teaching, and Tenure
8.	Italy	Yes	Yes – Research and Teaching
9.	Netherland	Yes	No Protection
10.	Spain	Yes	Yes – Mention Specifically
11.	UK	Yes	No Protection

<sup>246</sup> See further at Karran, Terence and Lucy Mallinson, 2017, *Academic Freedom in the U.K.: Legal and Normative Protection in a Comparative Context*, Lincoln, University of Lincoln Report, p. 10

<sup>247</sup> Barendt, Eric, “Freedom of Expression in the United Kingdom Under the Human Rights Act 1998”, *Indiana Law Journal*, Volume 84(3), 2009, Indiana, Indiana University Maurer School of Law p. 851 – 852

Like the UK, the USA gives broad enjoyment for citizen to express their opinions. It clearly seen on how American criticize a controversial Donald Trump, the current 45<sup>th</sup> President of the USA. Trump, in facing the critics, never us political powers to shut down them. Therefore, as figured on **Figure 26** below, America is crowned as the most supportive country of freedom of expression and the more tolerant of offensive speech than others in the world.<sup>248</sup>

**Figure 26. U.S. Most Supportive of Free Expression**



Source: Pew Research Center (2016).

Indonesia's effort to protect freedom of expression is well-expressed on the Constitution and has accorded to the UDHR principles, however, it is not for the academic freedom. Legal protection is only a legislative

<sup>248</sup> Wike, Richard, 2016, *Americans More Tolerant of Offensive Speech than Others in the World*, Pew Research Center, <http://www.pewresearch.org/fact-tank/2016/10/12/americans-more-tolerant-of-offensive-speech-than-others-in-the-world/>, accessed on 10<sup>th</sup> of February 2019 at 11:15 pm

protection, not stipulated on the constitutional document. However, based on the definition of academic freedom defined by many scholars above,<sup>249</sup> it can be concluded that academic freedom is a part of freedom of expression, so that without freedom of expression, academic freedom is nothing. Articles which contain academic freedom principles on the 1945 Constitution of the Republic of Indonesia are as follows:

**Table 6. Articles of Freedom of Expression on the 1945 Constitution**

No.	Article	Content
1.	Article 28	The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law
2.	Article 28C (1)	Every person shall have the right to develop him/herself through the fulfilment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race
3.	Article 28E (2)	Every person shall have the right to the freedom to believe his/her faith, and to express his/her views and thoughts, in accordance with his/her conscience
4.	Article 28E (3)	Every person shall have the right to the freedom to associate, to assemble and to express opinions
5.	Article 28F	Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process, and convey information by employing all available types of channels
6.	Article 28G (1)	Every person shall have the right to protection of his/her self, family, honor, dignity, and property, and shall have the right to

<sup>249</sup> Ashby (1966), *Op.Cit*; Van Alystne (1972), *Op.Cit*; Berdahl (1990), *Op.Cit*; Caston (2006), *Op.Cit*.

		feel secure against and receive protection from the threat of fear to do or not to do something that is human rights
7.	Article 28I (1)	The right to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances
8.	Article 31 (5)	The government shall advance science and technology with the highest respect for religious values and national unity for the advancement of civilization and prosperity of humankind

As listed on the **Table 6** above, Indonesia's constitutional protection on academic freedom universally specifies to the freedom of expression, freedom of conscience, rights to education and information. These protections are distributed furtherly on certain laws namely the Law No. 39 Year 1999 on Human Rights, the Law No. 20 Year 2003 on National Education System, the Law No. 11 Year 2008 on ITE, the Law No. 12 Year 2012 on Higher Education, and the Government Regulation No. 60 Year 1999 on Higher Education. Internationally, as a member of UN since its inception, Indonesia is bound by the UDHR. In fact, Indonesia accedes only limited number of international human rights instruments.<sup>250</sup> Just until 2005, Indonesia has decided to ratify the ICCPR and the ICESCR under the SBY's regime. All these laws are specifically regulated academic freedom inside the university. While the need to protect scholars is not only be regulated for protecting inside the university, but also outside.

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<sup>250</sup> Eldridge, Philip, "Human Rights in Post-Soeharto Indonesia", *The Brown Journal of World Affairs*, Volume 9(1), 2002, Providence, Watson Institute for International and Public Affairs, p. 127

The importance of protection for academic freedom outside the university is real. Like Rocky Gerung and Suteki cases who were prosecuted because of expressing opinions outside the university activities, two lecturers at IPB were sued for a total Rp3.51 trillion for giving expert statements at the court. Prof. Bambang Hero Saharjo and Dr. Basuki Wasis were asked to give their statements on a forest burning cases which already sentenced for 15 years imprisonment.<sup>251</sup> In carrying out their role as expert at the trial, these two lecturers are protected to Article 8 (1) of the Higher Education Law 2012 which states:

*“Dalam penyelenggaraan pendidikan dan pengembangan Ilmu Pengetahuan dan Teknologi berlaku kebebasan akademik, kebebasan mimbar akademik, dan otonomi keilmuan”* (In the implementation of education and development of science and technology, academic freedom, academic pulpit freedom, and scientific autonomy are applied).

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<sup>251</sup> Andi Saputra, *Op.Cit.*

**Figure 27. Two IPB Lecturers Sued after Giving Expert Statement**



Source: <http://www.radarbogor.id/2018/10/11/jadi-saksi-ahli-dua-pakar-ipb-ini-digugat-rp351-triliun/>

Scholars as expert witness is protected by Article 10 of the Law No. 31 Year 2014 on Protection of Witness and Victim which states:

“Witnesses, victims, witnesses of perpetrators, and/or reporters cannot be prosecuted legally, both criminal and civil for testimony and/or report that will be, is being, or has been given unless the testimony or report is not given in good way”.

However, there are still some parties who take advantage of the gap does not include “expert witnesses” to sue expert witnesses.

Threat to academic freedom outside the university targets not only what scholars speak, but also what scholars write. Last April 2018, a group of Police came to see Dr. Widjo Kongko, a researcher and Head of Program and Service Section for Technology Infrastructure Centre and Coastal Dynamics, *Badan Pengkajian dan Penerapan Teknologi* (BPPT) or

Technology Assessment and Application Body. The reason behind the Police investigation was because of Widjo's talk about "West Java Tsunami Potency" in a Seminar on 3<sup>rd</sup> of April 2018. At the seminar, Widjo explained the potency of huge wave tsunami that may hit some cities along the West Java south coast, and it panicked the people around.<sup>252</sup>

**Figure 28. Dr. Widjo Kongko and the Controversy Tsunami Research**



Source: <https://kumparan.com/@kumparannews/mengenal-dr-widjo-yang-dipanggil-polisi-karena-penelitian-tsunami>

Many parties regretted the Police action and argued that public unrest cannot be a basis for an investigation into the academic research. Based on Article 1 (4) of the Law No. 18 Year 2002 on the National System of Research, Development and Application of Science and Technology defines research as:

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<sup>252</sup> Anonymous, 2018, *Mengenal Dr. Widjo yang Dipanggil Polisi Karena Penelitian Tsunami*, Kumparan News, <https://kumparan.com/@kumparannews/mengenal-dr-widjo-yang-dipanggil-polisi-karena-penelitian-tsunami>, accessed on 10<sup>th</sup> of February 2019 at 4:30 pm



“Kegiatan yang dilakukan menurut kaidah dan metode ilmiah secara sistematis untuk memperoleh informasi, data, dan keterangan yang berkaitan dengan pemahaman dan pembuktian kebenaran atau ketidakbenaran suatu asumsi dan/atau hipotesis di bidang ilmu pengetahuan dan teknologi serta menarik kesimpulan ilmiah bagi keperluan kemajuan ilmu pengetahuan dan teknologi.” (Activities that carried out according to scientific principles and methods systematically to obtain information, data, and information relating to the understanding and proof of the truth or untruth of an assumption and / or hypothesis in the field of science and technology and to draw scientific conclusions for the purposes of advancing science and technology)

Indriyanto Seno Aji (2018) argues that academics opinion does not contain physical elements (*actus reus*) and mental element (*mens rea*) in criminal law matters which is required for punishment. If there is a dissenting opinion on the research, the action that should be taken is to prove or to test the correctness or incorrectness of the study. The one who responsible to do this job is other scholars systematically and academically based on standard, not in the context of evidence in the criminal justice system.<sup>253</sup>

Lord Robbins, a President of the British Academic, has ever gave a lecture in 1996 spoke that:

“The demand for academic freedom protection in higher education institutions is not the same, generally, as freedom of thought and

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<sup>253</sup> Anonymous, 2018, *Pemerintah Harus Hentikan Upaya Pemanggilan Widjo Kongko, Peneliti Tsunami Badan Pengkajian dan Penerapan Teknologi (BPPT) oleh Polda Banten*, Institute for Criminal Justice Reform, <http://icjr.or.id/pemerintah-harus-hentikan-upaya-pemanggilan-widjo-kongko-peneliti-tsunami-badan-pengkajian-dan-penerapan-teknologi-bppt-oleh-polda-banten/>, accessed on 10<sup>th</sup> of February 2019 at 4:45 pm

speech demand-it goes considerably beyond that principle. It is a demand that, in his employment as a scholar, he shall have certain freedoms not necessarily involved in ordinary contractual relations and that the institution in which he works shall likewise enjoy certain rights of independent initiative not necessarily granted to other institutions which are part of the state system.”<sup>254</sup>

Robbins’ confidence claimed that academic freedom goes ‘considerably’ beyond the freedom of thought and freedom of speech.

The urge of having a special action and provision to deal with academic activities which intersect with political, criminal, or civil matters is crucial. Before executing the report, Police might do pre-investigation to assess whether the case is worth handling or not. The assessment can be a way to still respect the academic freedom while enforcing justice. Indeed, the job of protecting academic freedom is not easy. The UDHR has promoted the enjoyment of academic freedom in Article 19 with its clear limitations and gave birth to many international legal instruments. The last effort lies to the political will of the country itself.

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<sup>254</sup> Robbins, Lionel, “Of Academic Freedom”, *Higher Education Quarterly*, Volume 20, 1966, New Jersey, Wiley, p. 48