

# Restrictions and Prohibition of the Use of Hijab on Company Employees: A Human Rights Analysis

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## Abstract

The prohibition of headscarves in companies has sparked contentious debates surrounding human rights. This study delves into this issue, aiming to scrutinize the prohibition of headscarves in the context of human rights by conducting a comprehensive analysis and comparison of pertinent laws and regulations. It is evident that despite varying perspectives on human rights across different countries, there exists a fundamental entitlement shared by all individuals—the natural rights inherent to humanity. Chief among these natural rights is the right to freedom of religion. In Indonesia, the right to freedom of religion is enshrined in the 1945 Constitution, articulated in Article 28E(1), Article 28E(2), and Article 29(2). Moreover, within the realm of labor relations, Law No. 13 of 2003 concerning Manpower explicitly safeguards against discrimination based on religious attire in the workplace, affirming every worker's entitlement to equal treatment without bias from employers.



Furthermore, various regulations promulgated by the United Nations underscore the universality of religious freedom, including the Charter of the Declaration of Human Rights, the 1948 Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These international frameworks collectively emphasize the imperative of upholding religious freedom for all individuals worldwide.

**KEYWORDS** *Freedom of Religion, Human Rights Protection, Hijab Prohibition, Freedom of Expression, Religious Issues*

## Introduction

Since birth, every human being has human rights that are upheld and recognized by everyone. These rights are more important than the rights of a ruler or king. Human rights itself comes from God Almighty which is given to all human beings. However, at this time many human rights have been violated by humans in order to defend their personal rights. Rights can be interpreted as the power to do something or property, while rights are the main thing, the basis. So that human rights or often referred to as human rights can be interpreted as property or property that is fundamental and inherent in every human being as a gift that has been given by God.<sup>1</sup>

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<sup>1</sup> Human rights are fundamental rights and freedoms for all people, regardless of nationality, sex, national or ethnic origin, race, religion, language or other status. Human rights include civil and political rights, such as the right to life, liberty and freedom of expression. In addition, there are social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work and the right to education. Human rights are protected and supported by international and national laws and treaties. Two key values form the basis of the concept of human rights. The first is “human dignity” and the second is “equality”. Human rights are actually the (experimental) definition of the basic standards necessary for a life with dignity. Their universality stems from the belief that people should be

Rights are normative elements inherent in every human being which in their application are within the scope of equal rights and freedom rights related to interactions between individuals or with agencies. Rights are also something that must be earned. The issue of human rights is something that is often discussed and discussed, especially in this reform era. Human rights are highly respected and paid more attention to in the reform era than in the pre-reformation era. It should be remembered that in terms of fulfilling rights, we do not live alone, and we live socially with others. Do not let us commit human rights violations against others in an effort to obtain or fulfill human rights on our own. In this case the author feels interested in writing a paper on human rights.

Theoretically, human rights are rights inherent in human beings that are natural and fundamental as a gift from God that must be respected, guarded and protected. The essence of Human Rights itself is an effort to maintain the safety of human existence as a whole through balancing actions between individual interests and public interests. Likewise, efforts to respect, protect and uphold human rights are a joint obligation and responsibility between individuals, the government (both civil and military government officials), and the state. Human rights according to

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treated equally. These two key-values are hardly controversial. That is why human rights are supported by almost all cultures and religions in the world. People generally agree that the power of a state or a particular group of individuals cannot be unlimited or arbitrary. The goal should be a jurisdiction that upholds the human dignity of all individuals within a country. See Freeman, Michael. *Human rights*. (London, John Wiley & Sons, 2022); McFarland, Sam, and Melissa Mathews. "Who cares about human rights?." *Political Psychology* 26, No. 3 (2005): 365-385; Cohen, Joshua. "Minimalism about human rights: The most we can hope for?." *Theories of Rights*. (London, Routledge, 2017. 419-442); Beitz, Charles R. *The Idea of Human Rights*. (Oxford, OUP Oxford, 2009).; Scoble, Harry M., and Laurie S. Wiseberg. "Problems of comparative research on human rights." *Global human rights: Public policies, comparative measures, and NGO strategies*. (London, Routledge, 2019), pp. 147-171; Haynes, Jeffrey. "Introduction: The "clash of civilizations" and relations between the West and the Muslim world." *The Review of Faith & International Affairs* 17, No. 1 (2019): 1-10; An-Na'im, Abdullahi Ahmed. "Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1." *Asian Perspectives on human rights*. (London, Routledge, 2021), pp. 31-54.

the United Nations (UN) are rights that are inherent in our own humanity, without which it is impossible for us to live as human beings.

Human rights are inherent to all individuals, irrespective of geographical location, and are universally acknowledged as stemming from the divine. In Indonesia, the protection of human rights is enshrined in the 1945 Constitution of the Republic of Indonesia, encompassing provisions such as Article 27(1), Article 28, Article 29(2), Article 31(1), and Article 30(1). This legal framework underscores the nation's commitment to upholding and recognizing the fundamental rights of every citizen. Moreover, human rights enjoy international recognition, as evidenced by documents like the United States Declaration of Independence, which articulates the foundational principles of human rights.

However, it's important to recognize that human rights are inherently individualistic and boundless, transcending borders and cultures. As such, there is a need to establish rules or norms that delineate the boundaries of these rights to prevent infringement upon broader rights. These regulations serve to ensure that while individuals enjoy the full spectrum of their rights, they do so in a manner that respects the rights of others and maintains societal harmony.<sup>2</sup>

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<sup>2</sup> Aswandi, Bobi, and Kholis Roisah. "Negara hukum dan demokrasi pancasila dalam kaitannya dengan hak asasi manusia (HAM)." *Jurnal Pembangunan Hukum Indonesia* 1, No. 1 (2019): 128-145; Peerenboom, Randall, Carole J. Petersen, and Albert HY Chen, eds. *Human Rights in Asia: A comparative legal study of twelve Asian jurisdictions, France and the USA*. (London, Routledge, 2006); Cmiel, Kenneth. "The emergence of human rights politics in the United States." *The Journal of American History* 86, No. 3 (1999): 1231-1250; Steiner, Henry J., Philip Alston, and Ryan Goodman. *International human rights in context: law, politics, morals: text and materials*. (Oxford, Oxford University Press, USA, 2008); Hadiprayitno, Irene Istiningsih. "Defensive enforcement: Human rights in Indonesia." *Human Rights Review* 11, No. 3 (2010): 373-399; McGregor, Katharine E. "Memory studies and human rights in Indonesia." *Asian Studies Review* 37, No. 3 (2013): 350-361; Arifin, Ridwan, Rasdi Rasdi, and Riska Alkadri. "Tinjauan Atas Permasalahan Penegakan Hukum dan Pemenuhan Hak dalam Konteks Universalisme dan Relativisme Hak Asasi Manusia di Indonesia." *Legality: Jurnal Ilmiah Hukum* 26, No. 1 (2018): 17-39; Warjiyati, Sri. "Instrumen Hukum Penegakan Hak Asasi Manusia di Indonesia." *Justicia Islamica* 15, No. 1 (2018): 123-138.

In fact, in this modern era, many human rights are violated or limited, for example, the prohibition of wearing the hijab while working in several related agencies. However, it was as if nothing had happened, meaning that it had become commonplace in the world of work, even though this had restricted Muslim women from fulfilling their obligation to cover their genitals by using the hijab. This is a form of discrimination against Muslims, for this reason this paper was created to discuss how the rights of those who wear the hijab are actually protected.<sup>3</sup>

This study used the library research method in which the author refers to legal journals and certain books as well as the opinions of experts. However, in practice, the writer prefers to refer to journals and books, because sources from journals and books can be accounted for. The author also cites sources that have been mentioned through footnotes or footnotes.

## **Protection and the Fulfilment of Human Rights: National & International Developments**

Human rights are an international problem, not just an internal problem of a country, therefore knowledge of international law, international politics and international relations is important to know. International law as a part of law in general. Within himself flow ideas, thoughts, ideals that are the same as law in general. International law also recognizes principles/ideas/aspirations and principles that take many

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<sup>3</sup> Choirunisa, Hanas, Edy Rahardja, and Mirwan Surya Perdhana. "Diskriminasi di Tempat Kerja (Studi Kasus Wanita Berjilbab di Perusahaan di Magelang)", *Thesis*. (Semarang, Fakultas Ekonomika & Bisnis Universitas Diponegoro, 2018); Yanuarti, Windi Tresa. "Tinjauan Yuridis Larangan Memakai Hijab di Suatu Perusahaan Menurut Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia dan Hukum Islam". *Thesis*. (Bandung, Fakultas Hukum Universitas Pasundan, 2019); Sinaga, Jaka Achmadi. "Pertanggungjawaban Pidana Terhadap Perusahaan yang Melarang Karyawannya Memakai Atribut Agama ditinjau dari Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (Studi Kasus di Kasimura/Depnaker Kota Medan)", *Thesis*. (Median, Universitas Muhammadiyah Sumatera Utara, 2017).

principles from ancient Roman law, natural law, and other legal principles.<sup>4</sup>

Human rights issues have long been a topic that has always been debated and listed on international agendas. The core of the international debate on this issue, apart from seeking mechanisms to guarantee human rights and prevent violations of them, also instills in the international community the importance of respect for human rights, both in the life of the state and relations between countries. The strong determination to achieve this goal was proven by the declaration of the UN Charter in 1948 and including the principle of respect for human rights in its charter as one of its main goals. In accordance with that objective, the UN General Assembly on December 10, 1948 adopted the Universal Declaration of Human Rights. Although not legally binding, this declaration was accepted as a concrete result of the international community in fighting for human rights in the world. Apart from being considered as a comprehensive codification of internationally recognized human rights, the Declaration is also recognized as the basis for the birth of other international human rights agreements. Efforts to advance human rights through international agreements must be seen not only as part of an effort to overcome the division of blocs in the world but also to achieve the democratization of international relations and create conditions on a national and international scale in such a way that ensure respect for and protection of individual and national rights<sup>5</sup>.

If it is related to human rights violations regarding the prohibition to work wearing the hijab for several related agencies, it has actually violated several articles of the Universal Declaration of Human Rights in 1948, some of which are:

1. Section 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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<sup>4</sup> Masyhur Effendi and Taufani Fuad S. Evandri, 2014, *Human Rights in Juridical, Social, Political Dimensions/Dynamics*, Ghalia Indonesia, Bandung, p. 127.

<sup>5</sup> Bahder Johan Nasution, 2014, *State of Law and Human Rights*, CV Mandar Maju, Bandung, p. 32.

2. Article 3 Everyone has the right to life, freedom and safety as an individual.
3. Article 5 No one may be tortured or treated cruelly, treated or punished in an inhuman or humiliating manner.<sup>6</sup>

The explanation for why states do not make more use of credibility-enhancing devices takes account of the unique way in which state violations of law are sanctioned in the international arena.<sup>7</sup> Human rights in international law (especially those set forth in the form of international agreements) should be used as a guideline for countries bound by these agreements, because after all, every country as a member of the international community is morally bound by the principle of *pacta sunt servanda* which lives in the international community. What is regulated in international agreements regarding human rights should be implemented in accordance with the conditions and social structure that exist in each country. To measure whether human rights have been implemented properly, social values in society are used as a benchmark. Thus, good faith in its relation to international agreements still exists, while the sovereignty of the country is not overridden by the implementation of international agreements that have been adapted to the natural and human conditions of the country concerned. This method will ensure that no power outside the country can impose human rights values that may not be appropriate to be implemented in their country just like that.<sup>8</sup>

The Indonesian national law also regulates human rights for its citizens, which are contained in the articles of the Constitution of the Unitary State of the Republic of Indonesia. The ban on wearing the hijab while working actually violates human rights regulated in article 29 UUD 1945 Concerning Freedom of Religion Article 29:

1. The state is based on the One and Only God.
2. The state guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and belief.<sup>9</sup>

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<sup>6</sup> Universal Declaration of Human Rights

<sup>7</sup> Andrew T. Guzman, "The Design of International Agreements", *The European Journal of International Law* 16, No. 4 (2005), p. 595

<sup>8</sup> Anis Widyawati, "International Legal Studies on Human Rights", *Pandecta Research Law Journal* 2, No.2 (July-December 2008), p. 46.

<sup>9</sup> Article 29 of the 1945 Constitution, Concerning Religious Freedom.

In the case of the ban on wearing the hijab at work, this clearly violates Article 28 paragraph (2) because in practice a corporate agency has prohibited a Muslim woman from fulfilling her obligations, namely covering her private parts by wearing the hijab.<sup>10</sup>

Human rights in the 1945 Constitution (before the amendment) are only listed in articles 27 to 34 and there are no special articles and chapters regarding human rights. These articles include equal rights in law and government and the right to get a decent job (article 27 paragraphs (1) and (2)), guarantees for freedom of association and assembly, expressing thoughts orally and in writing (article 28), guarantees to embrace religion and worship according to religion and belief (article 29 paragraph (2)), the right to defend the State (article 30 paragraph (1)), the right to receive education (article 31 paragraph (1)), the right to develop culture (article 32), economic rights (article 33 paragraph (1) to (3)), and social rights for the poor and neglected children to be maintained by the State (article 34).

After the 4th amendment in 2002, the 1945 Constitution was amended, the details on human rights became more numerous and complete. In addition to the previous articles still being maintained, a new chapter has been published entitled Chapter XA on Human Rights, meaning the additional articles (articles 28A to 28J). The MPR special session which was held in November 1998 succeeded in issuing the Decree of the MPR of the Republic of Indonesia No. XVII/MPRI/1998 concerning Human Rights. And loaded some important considerations, namely:

1. That humans as creatures of God Almighty are granted basic rights, namely human rights to develop themselves personally, their roles and contributions to the welfare of human life.
2. Whereas the preamble of the 1945 Constitution has mandated recognition, respect and will for the implementation of human rights in the administration of social and state life.
3. That the Indonesian nation as part of the world community should respect Human Rights and be embodied in the United Nations Universal Declaration of Human Rights.

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<sup>10</sup> Fatmawati, "The Right to Freedom of Religion and Worship in the Indonesian Law State", *Journal of the Constitution* 8, No. 4, (August 2011), p. 493.



The Indonesian government has made efforts to promote, respect and uphold human rights, even though until now there are still many violations of human rights in Indonesia. The efforts of the Indonesian government are manifested in various forms, *first*, forming Laws and Regulations on Human Rights, and *second*, forming Human Rights Institutions in Indonesia

## **Discrimination on the Use of Hijab at Work and the Causes of Its Occurrence**

Discrimination, according to Theodorson, discrimination is an unequal treatment of individuals, or groups, based on something, usually categorical, or specific attributes, such as based on race, ethnicity, religion, or membership of social classes. The term will usually be used to describe an action by the dominant majority in relation to a weak minority, so that it can be said that their behavior is immoral, so it is discriminatory. The United Nations (UN) itself states that, "Discrimination includes any behavior, which is based on differences made based on nature or community categorization, which has nothing to do with individual abilities or services. Marx understood that human alienation from society is produced in work under the capitalist economic system. Alienation in work became the main subject of Marx's contemplation."<sup>11</sup>

The prohibition of wearing the headscarf at work occurs in many workplaces, this is a violation of the right to embrace religion because wearing the headscarf is an obligation for Muslim women. This research started with the researcher's interest in the problem of women that wearing the headscarf is a Muslim's right that must be restricted when working. Discrimination against women has also been widely ratified by the government in order to narrow down the discrimination that occurs.

While the problem to be answered, i.e. how far are the knowledge of female workers about the regulations on headscarves in the workplace? Is there any resistance or resistance for women to the ban on headscarves in

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<sup>11</sup> Franz Magnis Suseno, *Karl Marx's Thoughts: From Utopian Socialism to Revisionism Disputes*, (PT Gramedia Pustaka Utama, Jakarta, 2001), p. 125.

the workplace? What do female workers do to remain veiled at work? The theory used in this study is Karl Marx's theory of alienation, and this research was conducted in the city of Surabaya, namely South Surabaya and East Surabaya, the selection of informants used a snowball, namely where data was collected from several people who met the criteria to be used as informants and asked to show people others who meet the criteria to become informants. In this study it was found that, female workers who wear the headscarf on a daily basis are forced to take it off while working, female workers know that there is a ban on wearing the headscarf but there is no resistance from female workers against the regulations. Women workers maintain their headscarves by consistently wearing headscarves outside the work environment

Prohibition of Hijab Worker Women Every woman, especially Muslim women, has the right to wear the headscarf according to her religious law, and these women also have the right to work in a workplace. But ironically, nowadays many workplaces prohibit female workers from wearing the headscarf when working. Before they go to work, female workers are informed of the rules regarding the prohibition of wearing the headscarf. The owner of the workplace informs the new workers that there is a ban on wearing headscarves while working. The regulation on the prohibition of headscarves is an unwritten regulation, because women workers receive verbal (covert) notification of the ban on headscarves from the workplace owner. The reasons for the workplace prohibit the use of headscarves in the workplace, because the owner of the workplace is a foreigner, who is none other than a non-Muslim. The owner of the workplace does not want religious prominence in the workplace (neutral).

Apart from that, there are concrete reasons, namely because they prioritize the objectives of the work, such as maintaining the security of goods, maintaining the cleanliness of production goods, and attracting consumers. The beginning of the occurrence of discrimination, namely the existence of a regulation made in the workplace regarding the prohibition of wearing the headscarf. This regulation has violated the rights of Muslim women in carrying out religious obligations. The discrimination experienced by workers largely oppresses minorities, namely workers who use headscarves at work. This causes friction that causes injustice to informants. Based on the description of the female workers, it can be

concluded that female workers feel uncomfortable with the regulations that are made, which require them to take off their headscarves while working. This discomfort creates a form of self-alienation from women towards themselves, as well as alienation from other people.

However, the women workers really needed the job, so they were forced to take off their headscarves. Factors that influence female workers to remove the headscarf are economic factors, because the salary they earn is quite large, so that female workers remain in the workplace. Alienation from himself according to Marx, because work is an essential human action, by using workers solely for the purpose of making a profit, it results in humans taking advantage of themselves. This condition occurs in female workers who are a minority group, who are subject to action from the owner of the capital and have never opposed the applicable regulations, especially the regulation prohibiting headscarves, because the informants did not dare to fight.

However, the informants continued to exist by maintaining their headscarves, even though there were regulations prohibiting the headscarf by continuing to try to comply with existing regulations, which required removing the headscarf while working. Their way of continuing to wear the headscarf is, for example, using the headscarf when going to work and removing the headscarf when at work and reusing it when outside the workplace. Based on the explanation of the conceptual boundaries regarding discrimination, there is a link between the theory of alienation (alienation) and discrimination, which explains that informants experience discrimination in the workplace, which causes alienation from themselves and others. Regulations that exist in the workplace, namely regulations regarding the prohibition of wearing the headscarf, cause women to experience acts of discrimination, because of the ban on wearing the headscarf. However, with these conditions, women workers still comply with existing regulations. However, the informants felt uncomfortable with this, because it caused them to be alienated. This is because they are used to wearing the headscarf, which then has to take it off when working. Even though the informants experienced alienation within themselves, they still worked at the company, because there were factors that influenced their actions, namely economic factors that aimed to meet their daily needs. who then had to take it off while working. Even though the

informants experienced alienation within themselves, they still worked at the company, because there were factors that influenced their actions, namely economic factors that aimed to meet their daily needs. who then had to take it off while working. Even though the informants experienced alienation within themselves, they still worked at the company, because there were factors that influenced their actions, namely economic factors that aimed to meet their daily needs.<sup>12</sup>

The above phenomena are forms of discrimination received by female workers. These women workers should have the right to wear the headscarf while working. This condition is a form of discrimination in the right to religion, and the right to freedom of expression to carry out religious teachings is a fundamental right that cannot be reduced under any circumstances. The act of discrimination in the workplace refers to Law No. 13 of 2003 concerning Manpower. The considerations that consider the Law state that "*protection of workers is intended to guarantee the basic rights of workers or laborers and guarantee equal opportunity, as well as treatment without discrimination on any basis to realize the welfare of workers/laborers and their families, while still paying attention to developments in the progress of the business world.*" It is also emphasized in Article 6 of the Manpower Act relating to discrimination against the prohibition of wearing the headscarf while working, as follows: "*Every worker/laborer has the right to receive equal treatment without discrimination from employers.*"

Discrimination against women due to work regulations, namely the prohibition on wearing the headscarf while working is a violation of human rights. Intentionally or not, the business entity has violated human rights. So, discrimination against female workers wearing the headscarf is the emergence of unfair or differential treatment of women who wear the headscarf. Wearing the headscarf is the right of every woman, especially Muslim women. The Indonesian government itself has ratified the convention "the elimination of all forms of discrimination against women" (CEDAW) on July 24, 1984 with Law No. 7 of 1984. As the women's convention is the commitment of countries in the world in emphasizing

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<sup>12</sup> Siska Dwi Manda Sari, "Prohibition of Women Working in Veils", *Journal of Law* 3, No.2, (October 2011), p. 148.

equality and justice for women.<sup>13</sup>This problem is very complex, because the use of the headscarf is a person's right in expressing appearance or in carrying out his religious teachings. However, in reality it is an unusual problem. Many workers are willing to let go or take off their headscarves to be able to work at the company. The large number of veiled women workers who are willing to take off their headscarves just to be able to work or to meet their economic needs have actually experienced discrimination and violations of human rights.

Not a few of these women workers also received receipts or were transferred from the company, because it was consistent with the headscarves they wore. The government itself has issued policies regarding women's rights. The policy is the creation of laws or local regulations that regulate the use of headscarves on women. This policy was made to repeal or remove the ban on wearing the headscarf when wearing the headscarf. However, in its implementation, many do not comply with these regulations. The background described above then gave rise to a sense of interest in conducting research on "*Discrimination of women workers wearing headscarves in the workplace*". This issue was raised because of the many problems of women wearing headscarves whose aim is to carry out religious orders; however, because of regulations in the workplace.

## **The Prohibition of the Use of the Hijab is a Violation of Human Rights**

Every woman, especially Muslim women, has the right to wear the headscarf in accordance with her religious law and these women have the right to work. However, ironically, nowadays many workplaces prohibit female workers, both prospective female workers and female workers who have worked for a long time, from wearing the headscarf while working. The reason the company does not allow or prohibits its employees from wearing headscarves while working is because it violates workplace policies regarding the appearance of employees while working. In addition, there

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<sup>13</sup> Hartono & Sunaryati, *Ratification of the UN Convention on the elimination of all forms of discrimination against women*, (Directorate General of Higher Education, Jakarta, 2000), pp. 6-8.

is another reason, namely the head of the company is a non-Muslim, so the ban on wearing the headscarf is enforced so that there is no prominence of certain religions. In addition to the ban on veiling policies, as for other policies made by the company or workplace, they are about marriage, pregnancy, and having children. These cases are usually experienced by women, who are often the easy targets of exploitation and discrimination in the world of work. In addition to the incidents described above, women also receive discrimination in the world of work that differentiates between men and women, such as women's salaries being less than men's, and women's positions in companies may not be higher than men.

In addition to regulations aimed at women, there was also a case in a workplace that prohibited male employees from performing the sunnah Friday prayers. Women also receive discrimination in the world of work that differentiates between men and women, such as women's salaries being less than men's, and women's positions in companies may not be higher than men. In addition to regulations aimed at women, there was also a case in a workplace that prohibited male employees from performing the sunnah Friday prayers. Women also receive discrimination in the world of work that differentiates between men and women, such as women's salaries being less than men's, and women's positions in companies may not be higher than men.

The reason for the ban being carried out by the workplace is because the workplace does not want work to be abandoned and activities at the workplace are always running. Some of the examples of these cases illustrate the form of company discrimination against workers, in particular the existence of a policy prohibiting the wearing of headscarves. The above phenomena are forms of discrimination received by female workers. The female worker should have the right to wear the headscarf while working. This condition is a form of discrimination in the right to religion, and the right to freedom of expression to carry out religious teachings is a fundamental right that cannot be reduced under any circumstances.

This act of discrimination in the workplace refers to Law No. 13 of 2003 concerning Manpower. The considerations that consider the Manpower Act state that protection of workers is intended to guarantee the basic rights of workers or laborers, and guarantee equal opportunities,

as well as treatment without discrimination on any basis to realize the welfare of workers/laborers and their families, while taking into account developments in world progress. effort. It is also emphasized in Article 6 relating to discrimination against the prohibition of wearing the headscarf while working, as follows: "*Every worker/laborer has the right to receive equal treatment without discrimination from employers.*" while still paying attention to developments in the progress of the business world." It is also emphasized in Article 6 of the Act relating to discrimination against the prohibition of wearing the headscarf while working, as follows: "*Every worker/laborer has the right to receive equal treatment without discrimination from employers.*"<sup>14</sup>

Discrimination against women due to work regulations, namely the prohibition on wearing the headscarf while working is a violation of human rights. Intentionally or not, the business entity has violated human rights. Discrimination itself is unfair or different treatment of a person or group based on something. So, discrimination against female workers wearing the headscarf is the emergence of unfair or differential treatment of women who wear the headscarf. Wearing the headscarf is the right of every woman, especially Muslim women.

Chairman of the West Kalimantan National Human Rights Commission (Komnas HAM), Kasful Anwar, assessed that this had indeed happened. So Komnas HAM West Kalimantan assessed that the company's management had discriminated against its female employees. "*Not only does it discriminate, but as a result of regulations prohibiting its employees from wearing the headscarf, the company consciously or not has violated human rights.*" According to him, why is it said discrimination, because there is unfair treatment, or differences, so the ban on female employees from wearing the headscarf is unfair treatment. "Hijab or veiling is a right as a Muslim woman and using the headscarf in Islamic teachings is obligatory for women to cover their genitals, and the Indonesian government has eliminated all forms of discrimination against women at the CEDAW conference on July 24, 1984 as a women's conference on equality and justice, as well as with the issuance of Law Number 7 of 1984,". Management should allow its employees to wear

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<sup>14</sup> Adisu Editus, *Women Workers' Rights* (Media Vision, Tangerang, 2006), p. 99.

headscarves, so that with the ban he sees there are restrictions on freedom as a citizen and religious, and not in accordance with the contents of Pancasila, namely the first and second precepts.

"In the Komnas HAM Law the religions that are recognized by the state are Islam, Christianity, Protestantism, Hinduism, Buddhism and Confucianism. Because Islam is a recognized religion and the majority religion in Indonesia, it is very inappropriate for a company to prohibit its employees from wearing the headscarf, which is required by Islamic teachings," he said. He explained, if indeed there is a company that prohibits its female employees from wearing the headscarf, then this condition is a form of religious discrimination, in expression, because carrying out religious orders is a fundamental right that cannot be reduced under any circumstances. "Acts of discrimination in the workplace refer to Law No. 13 concerning Labor which considers and mentions, protection of workers to guarantee the basic rights of workers or laborers, and guarantee equal opportunity, as well as treatment without discrimination on any basis while taking into account developments in the progress of the business world," he said. He added, if there were still companies issuing such policies, he considered the ban to be a limitation for every citizen who carried out his religious orders. "Rules from company management that prohibit employees from wearing the headscarf also occurred a few years ago at a mall in Singkawang City," he explained. Actually, said Kasful Anwar, the regulation to allow female employees to wear the headscarf had already been issued, but in fact there are still many companies that do not comply with this rule.

Women who work wearing headscarves are women who carry out their religious obligations as a Muslim. This is shown by wearing the headscarf when working or in the environment where he lives. However, women's right to carry out their religious obligations is hampered by work regulations. Women workers are willing to take off their headscarves because women workers really need this job, and also because of economic factors. This is because the salary they receive is quite decent, so that female workers are reluctant to fight and stay in the workplace. This is then explained by the theory of alienation by Karl Marx and the limitations of discrimination problems which explain that.



Laws in Indonesia protect freedom of religion specifically for the six religions recognized by the state: Islam, Catholic, Christian, Buddha, Hindu, and Confucius. Nevertheless, adherents of religions other than the six official religions still receive full guarantees by Article 29 (2) of the 1945 Constitution as long as they do not violate Indonesian law. The constitution and laws governing freedom of religion in Indonesia are as follows:

The following versions are versions The 1945 Constitution after the amendment, in particular second amendment relating to the following articles:

#### CHAPTER XA HUMAN RIGHTS

##### Article 28E

- (1) Everyone has the right to embrace a religion and to worship according to his religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return.
- (2) Everyone has the right to freedom of belief, express thoughts and attitudes, according to his conscience.

##### Article 28I

- (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of a law that applies retroactively are human rights that do not can be reduced under any circumstances.

#### CHAPTER XI. RELIGION

##### Article 29

- (1) The state is based on Belief in the One and Only God.
- (2) The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs.

The application of the above articles is limited by the human rights of others as regulated in article 28J as follows:

- (1) Everyone is obliged to respect the human rights of others in an orderly life society, nation and state.
- (2) In exercising his rights and freedoms, everyone must obey restrictions determined by law for the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with considerations of morality, religious values, security and public order in a democratic society.

Therefore, women workers who wear headscarves continue to wear headscarves, by wearing headscarves when going to work or returning from work. However, female workers also continue to comply with workplace regulations, namely by removing the headscarf in the workplace or when working, and also veiled female workers are willing to comply with workplace regulations, due to economic factors. As is banning the use of the hijab is a violation of human rights.

## **Conclusion**

This study concluded that human rights are an international problem, not just an internal problem of a country, therefore knowledge of international law, international politics and international relations is important to know. International law as a part of law in general. Within himself flow ideas, thoughts, ideals that are the same as law in general. International law also recognizes principles/ideas/ aspirations and principles that take many principles from ancient Roman law, natural law, and other legal principles. In the case of the ban on wearing the hijab at work, this clearly violates Article 28 paragraph (2) because in practice a corporate agency has prohibited a Muslim woman from fulfilling her obligations, namely covering her private parts by wearing the hijab. Discrimination against women due to work regulations, namely the prohibition on wearing the headscarf while working is a violation of

human rights. The act of discrimination in the workplace refers to Law No. 13 of 2003 concerning Manpower that emphasized that every worker/laborer has the right to receive equal treatment without discrimination from employers. Furthermore, Article 29 UUD 1945 concerning Freedom of Religion emphasized that the state guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and belief, therefore, banning the use of the hijab is included in the violation on human rights.

## References

- An-Na'im, Abdullahi Ahmed. "Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1." *Asian Perspectives on human rights*. (London, Routledge, 2021), pp. 31-54.
- Arifin, Ridwan, Rasdi Rasdi, and Riska Alkadri. "Tinjauan Atas Permasalahan Penegakan Hukum dan Pemenuhan Hak dalam Konteks Universalime dan Relativisme Hak Asasi Manusia di Indonesia." *Legality: Jurnal Ilmiah Hukum* 26, No. 1 (2018): 17-39.
- Aswandi, Bobi, and Kholis Roisah. "Negara hukum dan demokrasi pancasila dalam kaitannya dengan hak asasi manusia (HAM)." *Jurnal Pembangunan Hukum Indonesia* 1, No. 1 (2019): 128-145.
- Beitz, Charles R. *The Idea of Human Rights*. (Oxford, OUP Oxford, 2009).
- Choirunisa, Hanas, Edy Rahardja, and Mirwan Surya Perdana. "Diskriminasi di Tempat Kerja (Studi Kasus Wanita Berjilbab di Perusahaan di Magelang)", *Thesis*. (Semarang, Fakultas Ekonomika & Bisnis Universitas Diponegoro, 2018).
- Cmiel, Kenneth. "The emergence of human rights politics in the United States." *The Journal of American History* 86, No. 3 (1999): 1231-1250.
- Cohen, Joshua. "Minimalism about human rights: The most we can hope for?." *Theories of Rights*. (London, Routledge, 2017), pp. 419-442.
- Editus, Adisu. *Women Workers' Rights* (Media Vision, Tangerang, 2006).

- Effendi, Masyhur and Taufani Fuad S. Evandri. *Human Rights in Juridical, Social, Political Dimensions/Dynamics*, (Ghalia Indonesia, Bandung, 2014).
- Fatmawati, Fatmawati. "The Right to Freedom of Religion and Worship in the Indonesian Law State", *Journal of the Constitution* 8, No. 4, (August 2011).
- Freeman, Michael. *Human rights*. (London, John Wiley & Sons, 2022).
- Guzman, Andrew T. "The Design of International Agreements", *The European Journal of International Law* 16, No. 4 (2005).
- Hadiprayitno, Irene Istiningsih. "Defensive enforcement: Human rights in Indonesia." *Human Rights Review* 11, No. 3 (2010): 373-399.
- Hartono, Hartono & Sunaryati Sunaryati. *Ratification of the UN Convention on the elimination of all forms of discrimination against women*. (Directorate General of Higher Education, Jakarta, 2000),
- Haynes, Jeffrey. "Introduction: The "clash of civilizations" and relations between the West and the Muslim world." *The Review of Faith & International Affairs* 17, No. 1 (2019): 1-10.
- McFarland, Sam, and Melissa Mathews. "Who cares about human rights?." *Political Psychology* 26, No. 3 (2005): 365-385.
- McGregor, Katharine E. "Memory studies and human rights in Indonesia." *Asian Studies Review* 37, No. 3 (2013): 350-361.
- Nasution, Bahder Johan. *State of Law and Human Rights*. (CV Mandar Maju, Bandung, 2014).
- Peerenboom, Randall, Carole J. Petersen, and Albert HY Chen, eds. *Human Rights in Asia: A comparative legal study of twelve Asian jurisdictions, France and the USA*. (London, Routledge, 2006).
- Republic of Indonesia. The 1945 Constitution, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Sari, Siska Dwi Manda. "Prohibition of Women Working in Veils", *Journal of Law* 3, No.2, (October 2011).
- Scoble, Harry M., and Laurie S. Wiseberg. "Problems of comparative research on human rights." *Global human rights: Public policies, comparative measures, and NGO strategies*. (London, Routledge, 2019), pp. 147-171.
- Sinaga, Jaka Achmadi. "Pertanggungjawaban Pidana Terhadap Perusahaan yang Melarang Karyawannya Memakai Atribut Agama

ditinjau dari Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (Studi Kasus di Kasimura/Depnaker Kota Medan)", *Thesis*. (Median, Universitas Muhammadiyah Sumatera Utara, 2017).

Steiner, Henry J., Philip Alston, and Ryan Goodman. *International human rights in context: law, politics, morals: text and materials*. (Oxford, Oxford University Press, USA, 2008).

Suseno, Franz Magnis. *Karl Marx's Thoughts: From Utopian Socialism to Revisionism Disputes*, (PT Gramedia Pustaka Utama, Jakarta, 2001).

Universal Declaration of Human Rights (UHDR).

Warjiyati, Sri. "Instrumen Hukum Penegakan Hak Asasi Manusia di Indonesia." *Justicia Islamica* 15, No. 1 (2018): 123-138.

Widyawati, Anis. "International Legal Studies on Human Rights", *Pandecta Research Law Journal* 2, No.2 (July-December 2008).

Yanuarti, Windi Tresa. "Tinjauan Yuridis Larangan Memakai Hijab di Suatu Perusahaan Menurut Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia dan Hukum Islam". *Thesis*. (Bandung, Fakultas Hukum Universitas Pasundan, 2019).

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