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## HUMAN RIGHTS IN CONTEXT OF THE HISTORICAL NON-ALIGNED COUNTRIES' DEBATES ON UNIVERSALISM AND CULTURAL RELATIVISM, AND CURRENT HUMAN RIGHTS DEVELOPMENT IN INDONESIA

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# Human Rights in Context of the Historical Non-Aligned Countries' Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia<sup>1</sup>

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*Human rights issue was born as a result from Nazi Era by the occurrence of Universal Declaration of Human Rights in 1948. Human rights are meant to be universal by definition. The non-aligned countries generally consider human rights as western concept. The writer in this article is questioned whether or not other cultures have a concept of human rights. If they have a certain concept of human rights, the next question is whether or not it resembles that of the Universal Declaration. The writer finds it still difficult to build a bridge between universality and relativity of human rights concepts. Finally, the writer concludes that cultural relativity is real and an undeniable fact.*

**Keywords :** Human Rights, Universality, Relativity

## I. Background

Human rights are a relatively new term for what has been traditionally understood as natural rights or the rights of man.<sup>3</sup> In one of the drafting process events of the Universal Declaration of Human Rights in 1945-1948, Hansah Mehta from India questioned the drafter's plan to use the term of "the rights of man" which – according to her – didn't include "the rights of women".<sup>4</sup>

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<sup>3</sup> Maurice Cranston, *What are Human Rights?* (New York: Taplinger Publishing Co. Inc., 1973), at 1.

As we understood from the historical context, the Universal Declaration of Human Rights was the product of some global thinkers in their era who worked under the United Nations Commission on Human Rights chaired by Ms. Eleanor Roosevelt, the widow of the US former President Franklin Delano Roosevelt. This important document was the resultant of the struggle for eliminating human rights violations in post Nazi's era.

In the current event of the 60th Anniversary of the Universal Declaration of Human Rights, we need to reconstruct the great basic ideas behind the drafting of the Universal Declaration of Human Rights. One of the basic ideas was the drafting of the universal norms and standards for all peoples and all nations. But the development of human rights within it's nearly 60 years after the enactment of the Universal Declaration of Human Rights in 1948 brought us to some questions which are not only related to philosophical, religious, culture, and/or political backgrounds, but also the questions on the generation of human rights, on universalism versus relativism, as well as on the universalism versus regionalism of human rights as being discussed within this evening session.

## **II. Cultural Relativism in Human Rights Theories**

*Maurice Cranston, a noted human rights scholar, classifies human rights as:*

*"... a form of moral right, and they differ from other moral rights in being*

*The rights of all people at all times and in all situations. This universal characteristic of human rights is a large part of our problem in seeking to justify them".<sup>5</sup>*

If human rights are presumed to be universal, why are there any views labeling them cultural relativism? What is the perception of the non-aligned countries in this debate? From this point of view, I will try to describe that – in historical perspective – cultural relativity is an undeniable fact, especially

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<sup>4</sup> For an interesting discussion of this debate, see a documentary movie on "For Everyone Everywhere" which was produced by the United Nations Department of Public Information in New York, 1998. I usually use this movie as a part of my teaching materials on "Human Rights" at the Postgraduate Studies of the Faculty of Law University of Indonesia in Jakarta.

<sup>5</sup> Cranston, *op. cit.*, at 21-22. For a stimulating discussion, see also, Josiah A.M. Cobbah, "African Values and the Human Rights Debate: An African Perspective", *Human Rights Quarterly* (1987), at 309.

from the view of the non-aligned countries, which generally consider human rights as Western concepts.

If human rights are literally the rights everyone has as a human being, they would seem to be universal by definition. One of the objections to this view comes from the cultural relativism proponents. Their argument based on the cultural relativism doctrine which holds that at least some variations cannot legitimately be criticized by the outsiders.<sup>6</sup>

The primary question in this discourse is whether other cultures have a concept of human rights or not. If they have a certain concept of human rights, the next question is whether or not it resembles that of the Universal Declaration of Human Rights or any other human rights instruments.<sup>7</sup> From these questions comes another debate, namely, the universalism versus relativism of the human rights concepts.

Actually, we can find many arguments which try to condemn those who try to "impose incompatible values" or to "exploit the issue of human rights". This statement was stated by the late President Soeharto of Indonesia at the occasion of the tenth summit of the Non-Aligned Movement in Jakarta, Indonesia, in September 1992.<sup>8</sup> Such kinds of arguments were also raised from the group of countries which in the past we usually called the *Third World countries*.

Jack Donnelly, one of the leading writers in human rights theories, classifies some degrees of cultural relativism as follows:<sup>9</sup>

- (1) *radical cultural relativism*, which holds that "culture is the sole source of the validity of a moral right or rule". He confronts this with radical universalism, which holds that "culture is irrelevant to the validity of moral rights and rules, which are universally valid";
- (2) *strong cultural relativism*, which holds that "culture is the principal source of the validity of a moral right or rule" and

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<sup>6</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), at 109.

<sup>7</sup> Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism* (Newbury Park: Sage Publications, 1990), at 11.

<sup>8</sup> See Mike Jendrzeczyk, "Arguing the "indivisibility" of rights at the non-aligned conference", *10 Human Rights Watch* (Fall 1992), at 5.

<sup>9</sup> Donnelly, *op. cit.*, at 109-110.

(3) *weak cultural relativism*, which holds that “culture may be an important source of the validity of a moral right or rule”.

In my observation, the group of countries which in the past we usually called the *Third World countries*, especially the non-aligned countries, tends to hold this theory. Depending on the situation, each country may hold one or more degrees of the theory.

In Third World countries, individuals generally view their personhood in terms of their group identity. The concept of an autonomous individual possessed of inherent. They experienced domination, colonialism, authoritarian ruler, the repression of imprisonment of indigenous dissidents, etc.<sup>10</sup>

These experiences lead them to respect their own values. They always consider their own values as the best values. Subsequently, if there is an effort to indoctrinate them with new values, such as human rights, it will have no positive result. They will label it *cultural imperialism*.

### **III. Non-Aligned Countries' Debates in Historical Perspective**

At the occasion of the tenth summit of the Non-Aligned Movement (NAM) which took place in Jakarta, Indonesia in September 1992, human rights were a major topic of discussion. This meeting was attended by ninety-five government representatives and heads of state.

The debates in this forum focused on the complex relationship between civil and political and economic and cultural rights.<sup>11</sup> They tried to formulate “a strategy and rationale for resisting pressure for human rights improvements – especially if that pressure comes in the form of conditions on aid or trade with governments and institutions in developing countries.”<sup>12</sup>

As reported by Mike Jendrzeczyk, a Washington Representative of Asia Watch, some Third World countries representatives and heads of state

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<sup>10</sup> For a further discussion, see, Adamantia Pollis, *Human Rights in Liberal, Socialist, and Third World* in Richard Pierre Claude and Burns H. Weston, eds., *Human Rights in the World Community: Issues and Action* (Philadelphia: University of Pennsylvania Press, 1992), at 152-153.

<sup>11</sup> This same kind of debates on the complex relationship between civil, political and economic and cultural rights was also occurred in the drafting process of the Universal Declaration of Human Rights around 60 years ago. See the semi documentary movie of “For Everyone Everywhere”, *loc. cit.*

<sup>12</sup> See Jendrzeczyk, *loc. cit.*

presented their own perspectives on human rights. Juan Almeida Bosque, a representative from Cuba, stated:

“We cannot permit the imposition of foreign models to our realities ... It is equally important, as part of the international community’s adherence to human rights, to promote educational, scientific, and cultural advances.”<sup>13</sup>

Another view came from Iran’s delegation. They stated that “arrogant powers try to use the human rights issue as a political leverage in order to impose their views ...” Finally, the report also quoted a statement of Malaysia’s Prime Minister at that time, who criticized Western democracies for placing such high value on freedom of speech and free press, when “the world press is controlled by the powerful [and is used] to determine the very freedoms they preach”.<sup>14</sup>

If we look at these arguments, we will understand that the universality of rights may not prevail in certain parts of the world, especially in the non-aligned countries in that era. From this point of view, we can learn what the non-aligned countries think about human rights. Moreover, we can try to study what kind of rights prevails in these countries in historical perspective.

#### IV. Universalism and Relativism

Are human rights are really universal? Do the non-Western societies also have the concept of human rights? Some scholars argue that human rights are universal rights. They also realize that human rights are not timeless, unchanging, or absolute. They consider them as the highest moral rights which regulate the fundamental structures and practices of political life, and – in ordinary circumstances – take priority over the moral, legal, and political claims.<sup>15</sup>

On the other side, other scholars develop the theory of cultural relativism. The champions of this theory, among others, are Frans Boas, Ruth Benedict, and Melville Herskovits.<sup>16</sup> Herskovits, maintains that:

“... cultural relativism is a philosophy which, in recognizing the val-

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Donnelly, *op. cit.*, at 1.

<sup>16</sup> Renteln, *op. cit.*, at 63.



ues set up by every society to guide its own life, lays stress on the dignity inherent in everybody of custom, and on the need for tolerance of conventions though they may differ from one's own".

Do the Western societies really understand the non-Westerns' philosophies, ideologies, and values? This question will be the important part in these debates. As I quoted in the beginning of this paper, there is an interesting sentence from the blackboard at the band hall on the weagamow Lake Reserve on the North of Thunder Bay, Ontario, Canada: "I believe you understand what you think I said, but I'm not sure you realize that what you heard is not what I meant".<sup>17</sup>

I believe these words can reflect what the non-Westerners societies think about their own philosophies, ideologies, or values. If the Western societies don't understand what the non-Western think, how can they talk in the same language, especially in the field of human rights? In this point of view I can argue that a cross-cultural approach is needed in developing understanding between the Western and the non-Western societies.

#### **V. Current Human Rights Development in Indonesia**

In my observation, the debates on the universalism versus cultural relativism are not an important issue in Indonesia. After the Reformation Era which started after the resignation of the late former President Soeharto on 21 May 1998. According to International IDEA (Institute for Democracy and Electoral Assistance), there some agendas of democratization in post Soeharto era as follows:<sup>18</sup>

1. Constitutionalism and rule of law;
2. Regional autonomy;
3. Civil – military relation;
4. Civil society;
5. Governance structure reform, social-economic development, good governance, and ombudsman;

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<sup>17</sup> Quoted from Rupert Ross, *Dancing with a Ghost: Exploring Indian Reality* (Ontario, Canada: Octopus Publishing Group Co., 1992), at 5.

<sup>18</sup> International IDEA (Institute for Democracy and Electoral Assistance), *Penilaian Demokratisasi di Indonesia. Pengembangan Kapasitas Seri 8 [Democratization Assesment in Indonesia: Developing Capacity Serial No. 8]* (Jakarta: International IDEA, 2000), at 3-4.

6. Gender;
7. Religion pluralism.

Under the first issue, i.e. on constitutionalism and rule of law, Indonesia has amended the 1945 Constitution four times between the periods of 1999- 2002. Because of this amendment, the numbers of chapters, articles, and paragraphs increased significantly, especially the articles on the human rights protection.<sup>19</sup> In my opinion, these human rights articles encompassed both human rights aspects, either universalism or cultural relativism.

In 2005, we have ratified the two basic international human rights covenants, i.e. the International Covenant on Economic, Social and Cultural Rights<sup>20</sup> and International Covenant on Civil and Political Rights.<sup>21</sup> If we look from the beginning of the Reformation Era in 1998, in the field of human rights, we should fairly observe that Indonesia has achieved some very good progresses, even though some practical problems, like human rights violations, still occasionally occurred.

From the field of legal substances, especially in the level of law, since 1998 we have ratified some important related human rights instruments and also enacted some related laws as follows:

1. Ratification of Convention Against Torture and Other Cruel, Inhuman, and Other Cruel, Inhuman or Degrading Treatment and Punishment;<sup>22</sup>
2. The enactment of Government Regulation in Lieu of Laws No. 1 of 1999 concerning "Human Rights Court";<sup>23</sup>
3. Ratification of the ILO Convention No. 105 concerning the Abolition of Forced Labor;<sup>24</sup>
4. Ratification of the ILO Convention No. 111 concerning the Discrimination in Respect of Employment and Occupation;<sup>25</sup>

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<sup>19</sup> Please see Chapter XA, Articles 28, 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28J and other Articles related directly or indirectly with the human rights protection in the 1945 Constitution after the constitutional amendment (1999-2002).

<sup>20</sup> See Law of the Republic of Indonesia Number 11 of 2005 on the ratification of this covenant.

<sup>21</sup> See Law of the Republic of Indonesia Number 12 of 2005 on the ratification of this covenant.

<sup>22</sup> See Law of the Republic of Indonesia No. 5 of 1998 on the ratification of this convention.

<sup>23</sup> This form of regulation was then replaced by Law No. 26 of 2000 concerning Human Rights Court.

<sup>24</sup> See Law of the Republic of Indonesia No. 19 of 1999 on the ratification of this convention.



5. Ratification of International Convention on the Elimination of All Forms of Racial Discrimination 1965;<sup>26</sup>
6. The enactment of Law No. 5 of 1999 concerning Human Rights;<sup>27</sup>
7. Ratification of ILO Convention No. 182 concerning The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor;<sup>28</sup>
8. The enactment of Law No. 31 of 2002 concerning Political Parties<sup>29</sup>
9. The enactment of Law No. 32 of 2002 concerning Broadcasting;<sup>30</sup>
10. Law No. 15 of 2003 on the Enactment of Government Regulations in Lieu of Laws No. 1 of 2002 concerning the Combat Against the Terrorism Crime as a Law;<sup>31</sup>
11. Law No. 16 of 2003 on the Enactment of Government Regulation in Lieu of Laws No. 2 of 2002 concerning the Implementation of Government Regulation in Lieu of Laws No. 1 of 2002 concerning the Combat Against the Terrorism Crime as a Law on the Case of the Bali Bomb Crime as a Law;<sup>32</sup>
12. Ratification of the ILO Convention No. 181 concerning Labor Inspection in Industry and Commerce;<sup>33</sup>
13. Ratification of the Kyoto Protocol to the United Nations Frame Work Convention on Climate Change;<sup>34</sup>
14. Ratification of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity;<sup>35</sup>
15. The enactment of Law No. 23 of 2004 on the Elimination of Violence within Family;<sup>36</sup>
16. Law No. 39 of 2004 on the Placement and Protection of the Indonesian Workers Abroad.<sup>37</sup>

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<sup>25</sup> See Law of the Republic of Indonesia No. 21 of 1999 on the ratification of this convention.

<sup>26</sup> See Law of the Republic of Indonesia No. 29 of 1999 on the ratification of this convention.

<sup>27</sup> See the complete text of this Law on <http://www.legalitas.org/incl.php/buka.php?d=1900+99&f=uu39-1999eng.htm>.

<sup>28</sup> See Law of the Republic of Indonesia No. 1 of 2000 on the ratification of this convention.

<sup>29</sup> See Law of the Republic of Indonesia No. 31 of 2002.

<sup>30</sup> See Law of the Republic of Indonesia No. 32 of 2002.

<sup>31</sup> See Law of the Republic of Indonesia No. 15 of 2003.

<sup>32</sup> See Law of the Republic of Indonesia No. 16 of 2003. This Law was then annulled by the Constitutional Court of the Republic of Indonesia because of the retroactivity reason.

<sup>33</sup> See Law of the Republic of Indonesia No. 21 of 2003 concerning the ratification of this convention.

17. Ratification of the International Covenant on Economic, Social, and Cultural Rights;<sup>38</sup>
18. Ratification of the International Covenant on Civil and Political Rights;<sup>39</sup>
19. Ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture;<sup>40</sup>
20. Ratification of the International Convention for the Suppression of Terrorist Bombings 1997;<sup>41</sup>
21. Ratification of the United Nations Convention Against Corruption 2003;<sup>42</sup>
22. The enactment of Law No. 13 of 2006 on Witness and Victims Protection;<sup>43</sup>
23. Ratification of the Convention on the Prohibition of the Use of Stockpiling, Production and Transfer of Anti-Personnel, Mines and Their Destruction;<sup>44</sup>
24. The enactment of Law No. 21 of 2007 on the Elimination of Human Trafficking;<sup>45</sup>
25. The enactment of Law No. 24 of 2007 on the Embankment of Natural Disaster;<sup>46</sup>
26. Ratification of the ILO Convention No. 185 concerning Revising Seafarers' Identity Documents Convention, 1958;<sup>47</sup>

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<sup>34</sup> See Law No. 17 of 2004 concerning the ratification of this convention.

<sup>35</sup> See Law of the Republic of Indonesia No. 21 of 2004 on the ratification of this convention.

<sup>36</sup> See Law of the Republic of Indonesia No. 23 of 2004.

<sup>37</sup> See Law of the Republic of Indonesia No. 39 of 2004.

<sup>38</sup> See Law of the Republic of Indonesia No. 11 of 2005 concerning the ratification of this covenant.

<sup>39</sup> See Law of the Republic of Indonesia No. 12 of 2005 concerning the ratification of this covenant.

<sup>40</sup> See Law of the Republic of Indonesia No. 4 of 2006 concerning the ratification of this treaty.

<sup>41</sup> See Law of the Republic of Indonesia No. 5 of 2006 concerning the ratification of this convention.

<sup>42</sup> See Law of the Republic of Indonesia No. 7 of 2006 concerning the ratification of this convention.

<sup>43</sup> See Law of the Republic of Indonesia No. 13 of 2006;

<sup>44</sup> See Law of the Republic of Indonesia No. 20 of 2006;

<sup>45</sup> See Law of the Republic of Indonesia No. 21 of 2007.

<sup>46</sup> See Law of the Republic of Indonesia No. 24 of 2007.

<sup>47</sup> See Law of the Republic of Indonesia No. 1 of 2008.

<sup>48</sup> See Law of the Republic of Indonesia No. 18 of 2008.

27. The enactment of Law No. 18 of 2008 on Waste Management.<sup>48</sup>

The ratification of the human rights instruments and the enactment of those sample laws during the Reformation Era showed us some progresses Indonesia achieved in the field of human rights. Based on theory of the generation of human rights by stated Karel Vassak, almost all three generation of human rights are covered in those human rights instruments and laws.

## **VI. Conclusions**

Based on those descriptions, I could conclude that cultural relativity is a real and an undeniable fact. To date, in some fields we find that it is still difficult to build a bridge between universality and relativity of human rights concepts. The Western societies generally hold the universality of human rights, and the non-Westerners usually represent the relativity. In this paper I have provided some historical perspectives of the non-aligned countries debates.

In my opinion, the most important thing in this debate is how to reconcile universality and relativity in constructing human rights instruments that countries can talk about human rights in the same language.

In the Reformation Era which started after the resignation of the late former President Soeharto on 21 May 1998, the issue on the universality versus relativity in human rights is not a primary thing. Since that era, Indonesia has made some good progresses in the field of human rights, even though there are still some problems of human rights violations occurred.

One of the important mechanisms for human rights development in the future is through providing human rights education in all level and kind of state and private educations in Indonesia.

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