

Analysis on Human Rights Enforcement by Adopting UDHR in Indonesia and Malaysia

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ABSTRACT

Human Rights is one of the major priorities which continue to be pursued by the Association of Southeast Asian Nations (ASEAN). This is manifested by the commitment of member countries to establish the ASEAN Intergovernmental Commission on Human Rights in 2009 which resulted in the ASEAN Human Rights Declaration in mid-2012. In promoting human rights, many countries have adopted the values of the Universal Declaration of Human Rights (UDHR) which is the main foundation for freedom and equality. This research found that Indonesia and Malaysia both have already had various UDHR values in their constitution and even implement them in the foreign policy of their respective countries. By utilizing constructivism theoretical approach through a qualitative method, where literature study is conducted by gathering information through books, reports, news articles and journal articles. Our analysis finds that there are significant differences in the human rights systems implementation and mechanisms developed by each ASEAN country, including in Indonesia and Malaysia. Therefore, the authors suggest using a sustainable constructive approach in adopting UDHR values.

Keywords: human rights, enforcement, UDHR, Indonesia, Malaysia, constructivism

INTRODUCTION

World War II, which lasted for six years from 1939 to 1945 involved more than one hundred million people from various military forces around the world, resulting in the emergence of two major conflicting alliances that ultimately violating some basic rights. World War II had a huge impact on the formation of the United Nations (UN). In its development, UN member countries then gave birth to the Universal Declaration of Human Rights (UDHR) which became a general reference for basic human rights throughout the world that must be protected. Human rights are basically a right that is owned from birth. "Those fundamental rights, which empower human beings to shape their lives in accordance with liberty, equality, and respect for human dignity" (Manfred, 2013). There are 5 types of human rights according to the Universal Declaration of Human Rights, namely personal rights, legal rights (legal protection rights), civil and political rights, subsistence (the right to guarantee the existence of resources to support life), and economic rights. The UDHR was ratified by the UN General Assembly resolution on December 10, 1948 which later became an example for countries that want to build and develop themselves as a

democracy that respects, upholds, and protects human rights. UDHR is not binding on countries that participate in signing it, but UN hope that their member countries can include the values of UDHR in their respective country's constitutions or other legislation. The birth of the UDHR was not able to eliminate all forms of oppression or torture. But for that case, the United Nations made efforts to obtain some juridical principles, with the intention that the text could bind all countries in the world.

The UDHR contains of 30 articles that regulate the protection of the most important fundamental rights regarding the protection of civil and political rights as well as economic, social and cultural rights. In addition to successfully producing the UDHR, the United Nations have also succeeded in establishing the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The two covenants can be seen as an implementing regulations for the main text of the UDHR.

Indonesia and Malaysia are members of the United Nations that have ratified UDHR as international law of human rights. Indonesia ratified the UDHR in 1950, as it is in line and already stated in the 1945 Constitution (UUD) of the Republic of Indonesia. Meanwhile, Malaysia ratified the UDHR in 2008, but in 2018 the Malaysian government declared that no longer ratify UDHR after facing anger from Malay and Muslim organisations worried about the dilution of their right. (United Nations, 2020) On the approach to human rights, the Malaysian government argued that international standards of human rights are not applicable to Malaysia because of two main factors (TANG, 1995). Firstly, there is an over-emphasis on the rights of the individual as opposed to the rights of the community. Excessive individual freedom, according to the Malaysian government, leads to a decay in moral values and weakens nations, leading to the rise of new forms of racism and xenophobia, manifested in violence (TANG, 1995). Secondly, international standards of human rights, for example the UDHR also give greater priority to civil and political human rights than economic rights, and are thus alien to Malaysian traditions and cultures. (Bakar, 1997)

In Indonesia, human rights have been implicitly stated in the 1945 constitution. As the Preamble to the 1945 Constitution, a formulation has been stated which, among other things reads, "... and to promote the general welfare, to educate the life of the nation, and to participate in carrying out world order based on freedom, eternal peace and social justice". This shows that Indonesia also highly

upholds and protects human rights, both those that have been stipulated in the 1945 Constitution as the highest rule and in other regulations under it. Indonesia has accepted the essence of human rights from the UDHR into Indonesian laws and regulations, such as UU No. 39 (1999) which contains basic rights consisting of the right to life, the right to have a family and continue offspring, the right to self-development, the right to justice, the right to personal freedom, the right to security, the right to welfare, the right to participate in government, special rights for women and children's right (UUD, 1945). In addition, the Indonesian government then added a special chapter on human rights as stated in Chapter X A Article 28 A-J.

In Malaysia, The essence and the concept of human rights can be said to be incorporated in the Federal Constitution by the Proclamation of Independence declared by the first Prime Minister, Tunku Abdul Rahman on Independence Day. It says, "...the nation shall be founded upon the principle of liberty and justice and ever seeking the welfare and happiness of the people.." (Jewa, 1996) . However, the context of the human rights guarantees in Malaysia has two main features. It is the rejection of universal human rights because of their Western values and the adoption of Asian values (Castellino & Redondo, 2006), which appear to have their origins in the Confucian tradition. To the government, human rights are a new form of colonialism with the potential to destroy the inherent diversity of cultures and move global society towards cultural homogenization (Steiner, Alston, & Goodman, 2002).

In Indonesia, although there are international covenants that have regulated economic, sociocultural rights and international covenants on civil and political rights and nationally have been regulated in legislation, it does not mean that culturally the various international and national human rights instruments do not experience obstacles in implementation. There are various groups who oppose the universality of human rights by saying that not always the values contained in various international human rights instruments are in line and in sync with local culture (Claude & Weston, 1992) . The dominant patriarchal culture in Indonesia, for example, is an obstacle in efforts to promote and protect human rights. In addition, the political system does not reflect the protection of human rights. Lack of serious government, political commitment to the promotion and protection of human rights.

Indonesia as a country that ratified the UDHR has a record of quite a lot of human rights violations. Several cases of human rights violations that are still unresolved to this day are the mass murder in 1965, the Petrus 1982-1985 case, the 1989 Talangsari incident in Lampung, the 1998 Trisakti student shooting, the tragedies of Semanggi 1 and 2, the May 1998 riots, and the Waisor and Wamena case in Papua (Karina Putri Indrasari, 2015) . The eight cases of human rights violations include rape, ill-treatment, murder, torture and others. From year to year, until today, Papua and West Papua have become areas that are vulnerable to cases of human rights violations. In addition, there is a violation of the right to freedom of religion which on September 2020 a village head in Mojokerto, East Java, stopped Sumarmi, a Christian woman, from renovating and organizing prayers in her house unless she agreed "not

to put a cross in her house (Human Rights Watch, 2020).” While in the case of sexual orientation and gender identity, Indonesian authorities continued their assault on the basic rights of LGBT people. On August 29, police forcibly broke up a party at a hotel, arresting nine men and charging them with the crime of “facilitating obscene acts” under the pornography law, which discriminates against LGBT people (Human Rights Watch, 2020).

In Malaysia, there are also a practices of human rights violations that occur. Significant human rights issues included: reports of unlawful or arbitrary killings by the government or its agents; reports of torture; arbitrary detention; harsh and life-threatening prison conditions; arbitrary or unlawful interference with privacy; reports of problems with the independence of the judiciary; restrictions on free expression, the press, and the internet, censorship, site blocking, and abuse of criminal libel laws; substantial interference with the rights of peaceful assembly and freedom of association; restrictions on and intolerance of religious freedom; restrictions on freedom of movement; refoulement of refugees to a country where they would face a threat to their life or freedom; acts of corruption; trafficking in persons; violence against transgender persons; criminalization of consensual adult same-sex sexual activities; and child labor (Human Rights Watch, 2020).

The question then arises, by looking at the implementation of both countries, Indonesia and Malaysia may have several similarities in the case of human rights issue that occurred in each country. However, the act which taken by the Governments was the opposite to each other. The research is conducted with the aim to seek the effectiveness of human rights law enforcement used by each government on the basis of UDHR.

LITERATURE REVIEW

A study related to the enforcement of human rights applied in a country became an important and interesting discussion for further study. In discussing human rights issues, a comprehensive study analysis is needed from the root of the problem to enforcement or solutions offered by various actors. Various writings have discussed a lot about human rights enforcement both at the level of international institutions and state level. In a journal written by Ahmad Tholabi Kharlie, entitled "Human Rights in Indonesian Constitutional Amendments", discussed changes to the Indonesian constitution in the UUD 1945 Constitution by incorporating human rights principles in accordance with the UDHR but there are gaps in terms of norms that need to be fixed (Kharlie, 2013). Then, a journal written by Desi Hanara entitled "Mainstreaming Human Rights in the Asian Judiciary", explained about the protection of human rights which has been hampered due to the absence of binding human rights enforcement instruments, especially in Asia, that demanded a crucial role taken by the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) for the enforcement of human rights in the Asian Region. (Hanara, 2018)

In this writing, the authors tried to analyse the efforts made by the government and involving actors in achieving the needs of human rights values in accordance with international human rights instrument such as UDHR. In

the implementation, UDHR have shaped a strong guidance in upholding peace, justice, and democracy values to every country around the world. However, the contribution of UDHR and cultural diversities from various countries may face challenges. In the sense that more than one main ethnic (or racial) group lives side by side inside a political unit but is not fully integrated, Indonesia and Malaysia are well-known instances of plural societies. (Suryadinata, 1985)

Thus, the authors seek to study the enforcement of both countries in adopting Universal Declaration of Human Rights by using the theory of social construction and policy design by Anne Schneider and Helen Ingram. One of the primary ideas to understand a country's policy process is social construction and policy design. The theory may be utilized to create factual, testable statements concerning fundamental normative issues such as justice, citizenship, effective problem-solving, and democracy. It acknowledges that policy design would have far social and political consequences, affecting not only people's economic well-being but also their social reputation and how they perceive their government's relationship with them. (Ingram, Schneider, & Deleon, 2007)

METHOD

The authors utilize qualitative methodology in this research as a data gathering process and to analyse the activities of individuals or groups as the main issue in society. In this context, the qualitative approach thus helps to analyse the process of Indonesia and Malaysia in adapting the Universal Declaration of Human Rights for addressing human rights issue in both countries.

In this study, the library research method and secondary data sources are used, primarily on human rights enforcement involving actors such as Governments, foreign NGOs, civil society, and intergovernmental organizations. The authors chose to use this approach because in terms of the research, there are many supporting secondary sources. The authors can therefore recognize the effort of each governments in promoting and protecting human rights in accordance to Universal Declaration of Human Rights' values from their website and reports. Meanwhile, the authors can identify the response from journal, articles, newspaper, report, INGOs website, and state commission of external actors.

RESULT AND DISCUSSION

Institutions, governments, and NGOs are the main actors who are expected to become an institution that is fully responsible for efforts, promotion and protection of universal human rights in Indonesia and Malaysia. In addition, the role of universities and informal leaders as well as journalists in an effort to promote and protect these human rights are considered as crucial.

According to the latest statistics from the NGO Women's Aid Organization, there were 1,582 recorded rape cases in Malaysia by 2017, and 5,421 recorded cases of gender-based violence in 2018. There was a lack of investigation into accusations of rape and gender-based violence, and little accountability. After the movement control order to combat COVID-19 was implemented in March, the

Ministry of Women, Family, and Community Development experienced a 57 percent spike in calls from women in distress (Bureau of Democracy, Human Rights, and Labor, 2021). In October 2020, Malaysia's federal police recorded around 1,721 sexual crime cases involving children happened, and 813 cases were with the special court handling sexual crimes against children. Another event of human rights violation in Malaysia according to Academy for data Educational Development-ILO (2001-2006) was human trafficking. There is a human trafficking syndicate who targeted women children as their victims. The victims were sent to several countries and usually experienced sex exploitation and work exploitation. The Malaysian government reported in 2020 that children are vulnerable to online sexual exploitation, including some instances of child sex trafficking. (Hoon, 2013)

In Indonesia, by 2020, cases such as discrimination, social harassment, and human trafficking are among the most major aspects to discuss based on a report published by the United States Department of State. There were roughly 892 occurrences of violence against women from January to May. This is despite the cases that some of these women do not disclose their domestic abuse because of social stigma, humiliation, and a lack of support from family and close relatives. The reason for the recurrence of this incidence is that convicted rapists frequently receive low sentences, making it difficult for victims of abuse to prove their innocence. Furthermore, this report showed instances of prejudice and violence directed at a variety of groups, including children, individuals with disabilities, indigenous people, social stigma against people living with HIV and AIDS, and patients of Covid-19. (Bureau of Democracy, Human Rights and Labor, 2020)

When analyzing the enforcement of human rights in Indonesia and Malaysia, it's important to remember that the motives for human rights violations are often the same in both countries. The situation of people from the same family, notably the Malays, demonstrates the possibility of similarities in cases of human rights violations.

The Human Rights Commission of Malaysia (SUHAKAM) was established in 1999 by an Act of Parliament, the Human Rights Commission of Malaysia Act (Act 597) (Hoon, 2013). The main function of the Commission are; to promote awareness of and provide education in relation to human right, to advise and assist the government in formulating legislation and procedures and recommend the necessary measures to be taken, to recommend to the government regarding accession to international human rights instruments, and to inquire into complaints regarding infringements of human rights (Human Rights Commission of Malaysia, n.d.). The commission believes that an important aspect of prevention of human rights violations stems from activities such as awareness-raising and also monitoring. As-such, part of the Commission's initiatives includes the "Program SUHAKAM Bersama Masyarakat" which is an outreach program that primarily targets sub-urban and rural communities who have little understanding of the Commission's work and human rights in general (Asmah, 2016). SUHAKAM is a National Human Rights institution (NHRI) that is independent of the government, with a broad legal mandate to protect and promote human rights at the national level in an

independent manner. As a NHRI, SUHAKAM sits between the government and civil society and works in cooperation with civil society and state actors to provide an accurate account of the human rights situation, with recommendations to government and Parliament, as well as other state bodies. (Human Rights Commission of Malaysia, n.d.)

The Malaysian Constitution places arrangements regarding basic freedoms in Part II (Articles 5-13). These articles regulate regarding the guarantee of personal freedom (Article 5), free from slavery (Article 6 paragraph 1), equality before the law and rights equal protection of the law (Article 8), and the freedom to believe and practice religion (Article 11). Regarding freedom of religion, Article 3 paragraph (1) of the Constitution Malaysia stipulates that the state religion is Islam, but adherents of other religions can practice their beliefs peacefully and harmony within the territory of the Federation State Malaysia. However the Universal Declaration of Human Rights is a secular agreement. This raises questions about whether it satisfies those who are guided first and foremost by religious principles, and whether it is appropriate for countries or peoples who object to secularist ideals. This poses a major challenge for states whose principles are underpinned by religious doctrines if there is to be universal agreement on human rights. Article 18 of the Universal Declaration of Human Rights states that 'everyone has the right to freedom of thoughts, conscience and religion'. According to Islam, religion and politics are not separated; nor can the government be divorced from the official religion. However non-Muslims are subjected to civil law and not Sharia Law, which is only for Muslims.

Malaysia's faltering reform movement was halted in March when the Pakatan Harapan coalition collapsed and was replaced by a new coalition comprised of the United Malays National Organization (UMNO), the Malaysian Islamic Parti (PAS), and defectors from the Pakatan Harapan coalition. The new government, headed by Prime Minister Muhyiddin Yassin, aggressively cracked down on critical speech and protest, backed away from creating a truly independent police complaints commission, and took a hard line on the treatment of refugees and undocumented migrants (Human Rights Watch, 2021). In addition, there are several human rights issues in Malaysia, such as Freedom of Expression Police Abuse and Impunity Refugees, Asylum Seekers, and Trafficking Victims, Covid-19, Freedom of Religion, Criminal Justice, Sexual Orientation and Gender Identity, Child Marriage, and Key International Actors.

The Institute for Criminal Justice Reform (ICJR) assesses that there are changes and progress in the enforcement of Human Rights (HAM) in Malaysia. This was marked by the policy of abolishing the death penalty and stopping pending executions. Malaysia took a legal political decision by removing the threat of criminal / death penalty for 33 types of criminal acts contained in 8 laws (UU). The eight laws referred to in the Special Criminal Code for Murder; Law on Dangerous Drugs; Laws on Firearms 1960 and 1971; Law on Kidnapping, Law on Armed Forces; Law on Water Service Industry; and the Law on Strategic Trade. The death penalty actually views that a human being can no longer be repaired. In fact, every

human being is basically clean and pure. It's just the situation and the environment that makes a person evil. Therefore, there are environmental and community factors in the formation of a person's character that need to be seen carefully. ICJR views the death penalty as never solving the problem. Based on the studies that have been carried out, the death penalty from the beginning was formed only as a means of political control, not to create a deterrent effect.

On the other hand, efforts made by Indonesia's Government was made since 1995. At the time, Indonesia's Komisi Nasional Hak Asasi Manusia (Komnas HAM) or National Human Rights Institution (NHRI) conducted a research with the Department of Education and Culture to see if human rights education might be integrated into Indonesian schools. It was carried forward by Komnas HAM's human rights education pilot project in 1998. Human rights values were socialized through activities such as flag ceremonies with lectures, sports, and art competitions in this project. However, the programs ran into financial difficulties, therefore Komnas HAM decided to revise an existing topic, Pancasila Education, which was introduced by the Indonesian government to improve comprehension about Pancasila as the ideology of Indonesia. (Setiawan, 2007)

Furthermore, the government has included the Citizenship subject, commonly known as Pendidikan Kewarganegaraan (PKn), as one of the required subjects that Indonesian students must complete. The introduction of state political institutions, human rights, constitutionalism, and democratization are all highlighted in this subject. On the opposite, the substance of this subject is frequently limited to a level of understanding of one's rights and responsibilities as a citizen. There were numerous facets of such an issue that were not discussed. Human rights instruments such as the International Bill of Human Rights and the Universal Declaration of Human Rights, for example, have received little attention in this regard. (Muhtaj, Siregar, Beru, & Rachman, 2020)

Human rights as a universal principle have been included in the Constitution of the Republic of Indonesia, both in the opening paragraph of the UUD 1945 and in the body of the UUD 1945, which was later reaffirmed in the UUD 1945 amendments. Indonesia also has UU No. 39 of 1999 concerning Human Rights as a kind of moral duty and the legislation of Indonesia as a UN member in recognizing and implementing the Universal Declaration of Human Rights (UDHR) and numerous other human rights treaties that have been ratified by Indonesia. (Kementerian Luar Negeri Republik Indonesia, 2019)

In strengthening its commitment as an effort to strengthen the enforcement of human rights, Indonesia has ratified at least eight of the nine major international human rights instruments, including the following conventions: "the Convention on the Elimination of All Forms of Discrimination Against Women (UU no. 7/1984); Convention on the Rights of the Child (Keppres no. 36/1990), including the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (UU no. 9/2012) and the Optional Protocol to the Convention on the Rights of the

Child on the Sale of Children, Child Prostitution and Child Pornography (UU no. 10 of 2012); Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UU no. 5/1998); International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (UU no. 29/1999); International Covenant on Economic, Social, and Cultural Rights (UU no. 11/2005); International Covenant on Civil and Political Rights (UU no. 12/2005); Convention on the Rights of Persons With Disabilities (UU no.19/2011); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UU no. 6/2012)". (Kementerian Luar Negeri Republik Indonesia, 2019)

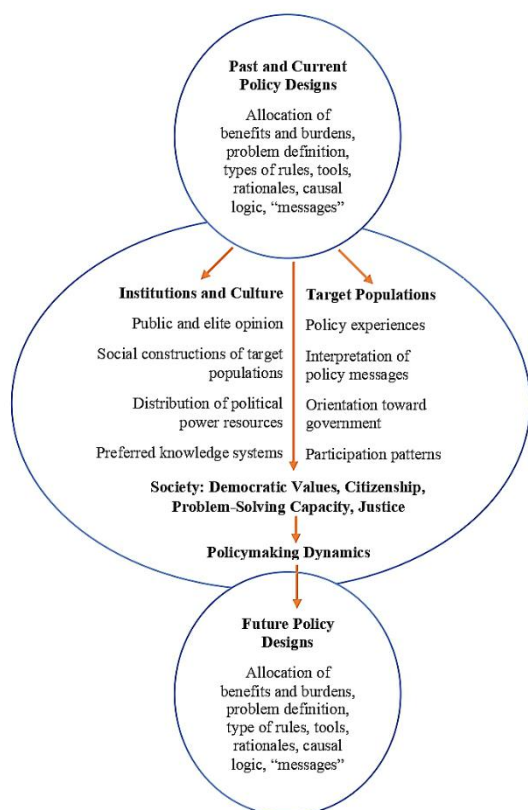


Figure 1. Social Construction and Policy Design

The existence of a policy design regarding UDHR values that contained in the Constitution of the Republic of Indonesia and Malaysia, has a long-term impact on the context of society, institutions, and the values of democracy and justice. In accordance with the theory of social construction and policy design, the policies made by the government are closely related to events or experiences felt by the people in the past. The policy design will give a message that the aspirations of the problems faced by the society and their active participation will encourage the effectiveness of government policies in the future. As a result, these policy ideas typically duplicate the current institutional culture, power connections, and social conceptions, but they do occasionally deviate from this pattern and introduce change. (Ingram, Schneider, & Deleon, 2007) An understanding of social construction assists in determining the conditions that will lead to the reproduction or change of values.

In order to achieve an effort to understand human rights in accordance with the UDHR, it is necessary to integrate and

share the goals of the three state institutions, namely the executive, legislative and judiciary, as well as NGOs. It is necessary to disseminate universal human rights values so that human rights protection can be achieved. It is necessary to create a culture that supports universal human rights, to abolish laws and regulations that are not in line with international human rights standards, to be active government in an effort to prevent impunity and the birth of a legal system and politics that really provides a place for the development of progress efforts and protection of human rights. The existence of a strong and continuous civil-society respect for human rights is something that needs to be emphasized.

CONCLUSION AND RECOMMENDATION

Indonesia and Malaysia had experienced significant challenges with human rights issues. The diversities of cultures, beliefs, and societies have shaped their law and political system. In the context of human rights enforcement, both countries have showed their commitments to uphold human rights values by creating each commission that focused on human rights issues and ratifying several human rights instruments, including Universal Declaration of Human Rights (UDHR).

In adopting the UDHR values, it is important to rely on the common understanding from the people and the authority of the government. Both countries, Indonesia and Malaysia, have come up with solutions offered by implementing public opinion and preferred knowledge system to achieve a democratic, just and peaceful society.

Furthermore, this research is limited to data gathered in each country's society. Direct data or information from society will make a significant contribution to study. Research surveys include questions on the Indonesian and Malaysian people's knowledge of the UDHR values and their implementation can produce concrete results while also providing more effective solutions. It is expected that this type of research would be able to answer questions about human rights.

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