

The Effect of Globalization on The National Legal Policies of Human Rights

Hassan Suryono¹, Raharjo²

^{1, 2}Sebelas Maret University, Surakarta - Indonesia

Email : hassansuryono@yahoo.com

Abstract-- *The purpose of this paper is (1) to explained whether human rights in the 1945 Constitution of the Republic of Indonesia have adopted universal human rights, and (2) the configuration of the implementation of universal human rights in the Republic of Indonesia. This paper was used comparative and synchronous methods of universal human rights and human rights in the 1945 Constitution of the Republic of Indonesia can result in reviews of (1) That human rights in the Indonesian Constitution have responsively adopted universal human rights values even though they are not perfect. This is due to differences in theoretical level and its implementation. Because the theoretical level concerns the substance of Human Rights, while the implementation involves relevance to the culture in which this Human Rights will be applied. So it is not the substance of Human Rights that will replace the social system in the society, but the process and implementation itself that will replace it. Human Rights must be in accordance with the values of Pancasila and must be based on Pancasila. (2) Various international human rights instruments that have been adopted by The State of the Republic of Indonesia into the legislation in its implementation must be in accordance to the conditions of the Indonesian people. But now it depends on the political will of government of the Republic of Indonesia to implement purely and consistently the above mentioned regulations.*

Keywords- *Indonesian Human rights, Legal policy, Globalization.*

I. INTRODUCTION

The background of this paper is that in the era of globalization, relations between one country and another have been unavoidable, including Indonesia to deal with Western countries. The West is in the decisive position, while the Indonesian state is in the decisive position. Tensions often occur because there are still differences in the concept of Human Rights. However, what is best for Indonesia is certainly not rejecting universal human rights values, but at least trying to adhere to minimum standards. We conduct a moral movement to all components of the nation, that Human Rights is one of the prestige of humanity that we must uphold and try not to violate and perform with good will so that

we will have added value in the eyes of the international world. [1] In the global context, national law not only contains elements of ideology, constitution, human condition, nature and national traditions (local characteristics) but inevitably must adapt to various trends recognized by civilized nations in the world (global trends) as implied in international instruments such as: conventions, declarations, resolutions, guidelines, codes of good conduct, minimum standards of rules and so on [2] The adaptation can be conducted through various steps such as ratification of international conventions, harmonizing universal principles with national law, in adopting or internalizing foreign laws into national law and entering into bilateral and multilateral agreements, all of which may not be allowed contrary to Pancasila as the source of the law of the Republic of Indonesia (Negara Kesatuan Republik Indonesia).[3] [4]

Based on the above thought, whether international human rights values have been accommodated in Undang-Undang (Constitution) 1945, amended or not. To the extent the relevance of universal human rights values with human rights values in the Undang-Undang 1945 resulting from the amendment, it is necessary to make an effort to synchronize human rights in Undang-Undang 1945 of the Republic of Indonesia with universal or international human rights values.[5]

Human rights issues have now become a major world spotlight international in relation to the life of the nation and state. Human rights insights in the global dimension are always linked to rights political, social, economic and cultural life. [6] Robertson and Giddens defines globalization as world compacting and intensification consciousness of the world as a whole or intensification of relations social all over the world connecting distant localities such that the events of a place are determined by other events that took place miles away and so otherwise.[7]

As an instrument of human rights legislation, rules and regulations are socialized to the community so that the community knows and seeks to develop supporting facilities so that what is

contained in human rights can be obeyed. It will have an effective effect on human rights legislation. For this reason, efforts must be made to “plan human rights legislation properly as well as to conduct their duties in the same direction and in accordance with the agreed sound and interpretation, Human Rights enforcers must firmly demand violators” [8], or human rights legislation. Humans can be effective so the makers, implementers and role holders must be in one work system.

Abdullah Ahmed An-Na'im criticized the practice of human rights in the world “the current international standard of human rights, together with the machinery for promoting and implementing them, may not be sufficiently universal because they lack legitimacy in major cultural traditions” [9]. Currently, in the postmodern era known as “the rise of mass forms of communication and the commodification of intellectual products and symbolic forms of the era of mass culture and timediazoon [10]. Such developments urge changes in the way they act, even think in many fields. With the entry and spread of sophisticated media technology that produces mass products, business as usual cannot be sustained anymore.

The implementation of human rights needs normative provisions. [11] Normative rules are in the form of provisions containing rights and obligations to both the community and the government, while moral commitment is in the form of a sincere and caring struggle to fight for the rights and obligations of others in accordance with human rights legislation. In recent times, there has been an assessment from the western world that it is as if the Indonesian government is not consistent in implementing Human Rights. [13]. This assessment is based on the human rights perspective prevailing in the West that has an individualist and liberal nature and capitalist, so it is natural for them to judge that way. It is certainly different from the paradigm of the Indonesian government in addition to recognizing the existence of individual rights, also recognizing the existence of collective or general rights and even individual rights will be disregarded by the state, then society must respond.

The difference between the West and the Indonesian government on Human Rights revolves around whether Human Rights are universal and include everything applies without exception, whether or not it takes into account the culture that exists in each country.[14] In addition there are also different perspectives on the priority of the rights owned by its citizens, on the one hand the western countries emphasize civil and political rights, while for Indonesia in addition to these rights it is also considered important to protect mutual economic and cultural rights hook hook.

Regarding human rights, logic, (thought) originating and different cosmologies that have sufficient potential to enrich human rights processes

and practices. Rejection and criticism of individualism does not occur sporadically, but has become a public problem. Indeed, we really live in an era full of deconstruction reversals of existing order, thought and tradition [15].

II. PROBLEMS

The Indonesian people, like other nations in the era of globalization, cannot avoid the swift flow of complex changes (innovation) as a result of sophisticated information technology, telecommunications, and transportation. Some indicators of the impact of globalization that hit the nation and state of Indonesia:

- 1) Strengthening the rule of law, democratization and the demand for human rights to be conducted.
- 2) Strengthening legal regulations and making legislation that is impartial and beneficial to the interests of the people at large.

Globalization has become a daily reality that cannot be avoided. The process is very fast and complex with reach broad aspects, unstopably into all fields human life. Globalization is a multidimensional process in the social, economic, political, and cultural aspects that move independently extensive and intensive into the world community. [16]

Literally global means world, universe.[17]. This word is next be a term that refers to a state where one is between country with other countries have merged. Territorial, cultural, and boundaries so it is no longer a barrier to doing the union. This situation was created thanks to technology support sophisticated in the field of communication, such as radio, television, telephon, fax, the internet and so on.

Globalization as a continuation issue of multinationalization and transnationalization has broken down cultural boundaries widely more than just crossing administrative geographic boundaries between countries. This process makes humans with their socio-cultural relations as a sub-human in the global global market vortex. Globalization even is the pinnacle of world capitalism at the end of the 20th century, which gives great possibilities to the world of humanity as subordinated and co-opted by the tough machine of global capitalism and paced across. A number of humanitarian crises are expected to increase massive and complex [18]

On the empirical plain globalization means an increasingly linked process closely from all aspects of life, a symptom that arises from interaction which are increasingly intensive in trade, financial transactions, media and technology. [19]. Globalization contains ambivalence. On the one hand, the globalization process is a great opportunity in this age that brings to increasingly human development to the corners of the world and benefit

all. But on the other hand, globalization gives birth to conflicts between people on this earth, which is caused by the forceful flow of cultural uniformity. [20]

Apart from having a positive impact in the form of increased accumulation capital, technology, a wider network; globalization also brings negative impacts such as conditions of dependence are good for the individual, community groups and the State and the worsening of poverty that afflicts people in developing countries. Sharply can be formulated, in other terms, globalization is a symptom at the same time being celebrated and mourned.[21] Due to the flow of global culture, international issues now have a lot of influence on political aspects. The influence includes issues on democracy, human rights issues, and transparency (openness).[22] In the socio-cultural aspect, issues arose about the need for pluralism and environmental preservation. In the economic field, emerging global markets, while in the field of security, issues of terrorism arise.[23]

Some international issues related to the impact of globalization on human rights are closely related to democracy.[24] Nowadays, the international world is very concerned about upholding human rights. The existence of various wars, conflicts, conflicts, oppression between people (the nation) is not an individual responsibility but the responsibility of the international community.

III. RESEARCH METHOD

Human Rights have become a global issue. Human Rights Enforcement is an international desire. It is evident from the many international charter or conventions on human rights. International and regional provisions concerning human rights can be seen in the following matrix:

Table 1 Human Rights Provisions on an International and Regional Scale Based on its Stipulation Year

No	Scale	Year	Name
1	International	1945	Universal Declaration of Human Rights issued by the United Nations on November 10, 1945 as a joint charter of the international community in respect and enforcement of human rights
		1966	1. International Civil and Political Rights Convention (1966) contains a number of civil rights. 2. International Covenant on Economics, Social and Cultural Rights of 1966 contains the formulation of a

			number of economic, social and cultural rights
			3. Optional Protocol Convent of 1966
		1989	International Bill of Human Rights of 1989 is a combination of two draft conventions, a universal declaration and a protocol of choice.
		1993	The Vienna Declaration of 1993 which is considered the second universal declaration of the countries which are members of the United Nations after the Universal Declaration of Human Rights 1945.
2	Regional	1950	Convention for the Protection of Human Rights and Fundamental Freedoms (Europaean Convention), an European rights treaty of 1959 prepared by the council of Europe.
		1981	African Charter on Human People's Rights (Bajul Charter) by an African State incorporated in the African Union (OUA) in 1981
		1990	Cairo Declaration on Human Rights in Islam by countries that are members of the OIC (Organization of Islamic Conference) in 1990
		1993	Bangkok Declaration received by Asian Countries in April 1993

Source: Document data processed by researchers, 2020

The existence of international human rights instruments or conventions does not immediately bind to the countries in the world. A country that wants international human rights instruments to apply in its country and becomes its national law needs to ratify. [25] Ratification means that the state binds itself to comply with the provisions contained in the human rights instrument and makes it part of the country's national law. However, not all countries have ratified international human rights instruments.

Globalization is described as a reduction in space and time unprecedented, reflecting an increase social, political, economic and cultural interconnection and interdependence on a global scale. [26] It is understood as a new social order no longer talk about things that are local in nature.

Global transformation has penetrated the whole world, where there are no more boundaries which is clear in a country, culture, transformation, economy, law and even people's behavior. [27] Globalization has resulted in more the dimming of the primacy of the nation state even is an important phenomenon that cannot be avoided by anyone, any nation and any country, including society, nation and Indonesia.[28]

Indonesia has tried to uphold human rights as the international demand. One of the efforts was conducted through the ratification of several international conventions on Human Rights.

Legal and institutional instruments for administering human rights, Indonesia has also stated its commitment to the recognition and enforcement of human rights through the establishment of institutions, protection, supervision and enforcement of human rights through legislation including Undang-Undang (UU) No. 9 of 1998 on freedom of expression in public., Undang-Undang No. 39 1999 concerning Human Rights, Undang-Undang No. 23 of 2002 concerning child protection, Undang-Undang No. 23 of 2004 concerning eliminating domestic violence, Undang-Undang No. 12 of 2006 concerning citizenship, Undang-Undang No. 13 of 2006 concerning witness and victim protection. Undang-Undang No. 14 of 2008 concerning disclosure of public information., Undang-Undang No. 40 of 2008 concerning the elimination of Racial and Ethnic discrimination. [29]

IV. DISCUSSION

The international conventions that have been ratified into Indonesian legislation can be seen in the following matrix,[30]

Table 2 Conventions that have been ratified in Indonesian law

No.	Convention Name	Indonesian Legislation
1	Geneva August 12, 1949	UU No. 59 of 1958
2	Women's Political Rights/Convention of Political Right of Woman	UU No. 68 of 1958
3	Convention on the elimination of Discrimination Against Women	UU No. 7 of 1984
4	Convention of the Riights of The Child	President Policy No. 36 of 1990
5	Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological/Biological and	President Policy No. 58 of 1991

	Toxis Weapons and on their Destruction	
6	International Convention Againsts Apartheid in Sports	UU No. 48 of 1993
7	Convention on employment	UU No 25 of 1997
8	Convention on women's political rights	UU No 68 of 1998
9	The Convention opposes torture and other cruel, inhuman or degrading treatment or punishment (Toture Convention)	UU No. 5 of 1998
10	International Labour Convention No. 87, 1998 Concerning Freedom Association and Protection on the Rights to Organize	UU No. 38 of 1998
11	ILO Convention on Discrimination in employment and occupation	UU No 21 of 1999
12	Convention on the Elimination Racial Discrimination	UU No. 29 of 1999
13	International Covenant on the Rights of social economic, cultural rights	UU No 11 of 2005
14	International Covenant on Civil and Political Rights	UU No 12 of 2005

Source: Document data processed by researchers, 2020

Meanwhile, conventions that have not yet been ratified but which have been signed by the government of the Republic of Indonesia can be seen in the matrix below [31]

Table 3 conventions which have been signed by the government of the Republic of Indonesia

No.	Convention Name	Date and Year Signed
1	Optimal protocol to the convention on the rights of the child prostitution and child pornography	24 of September 2001
2	Optimal protocol to the convention on the rights of the child on the involvement of the children in armed conflict	24 of September 2001
3	Convention on the elimination of discrimination against women	15 of March 2000
4	International convention for the suppression of the financing terrorism	24 of April 2001

Source: Document data processed by researchers, 2020

If seen from the table above, the Indonesian government is committed in protecting human rights. In addition to ratifying and signing the above

conventions, the Indonesian government established Undang-Undang of Human Rights stated in MPR (People's Consultive Assembly) Decree No. XVIII, MPR/1998, Undang-Undang No. 39 of 1999 concerning Human Rights. As a continuation of the Human Rights Law, Undang-Undang No. 26 of 2000 concerning Control of Human Rights.

V. CONCLUSION

Based on the results of content analysis and synchronization of national legal policies on human rights in 1945 Constitution and universal or international human rights, it can be concluded that:

1. That human rights in the Indonesian Constitution have been responsive in adopting universal human rights values even though it is not perfect yet. This is due to differences in theoretical level and its implementation. It is means that the theoretical level concerns the substance of Human Rights, while implementation involves relevance to the culture in which Human Rights will be applied. So it is not the substance of Human Rights that will change the social system in society, but the process and implementation itself will replace it. The human rights must be inline with the values of Pancasila and must be based on Pancasila.
2. Various international human rights instruments that have been adopted by the Republic of Indonesia into the legislation in their implementation must be in line with the conditions of Indonesian citizen. But now it is important to know how the Political Will of the Indonesia government implementing the regulation purely and consistently. Even though Indonesia is a legal country, the law can't play the role as a King or in other words the Rule of Law has not been created yet.
3. At law enforcement agencies, especially the court, it is necessary to design a recruitment system and development human resources of judges which is oriented to build scientific competence, professional skills, noble personality, moral courage and intellectual courage in upholding truth and justice.

REFERENCES

- [1] Anthony Giddens, *The nation state and violence*, Berkeley: University of California Press, 2000.
- [2] Manuel Castells, *The power of Identity*, Oxford: Blackwell, 1997.
- [3] Analisa, 1985-11, *Memperkokoh persatuan dan kesatuan*, Jakarta: CICS.
- [4] Analisa, 1986-8, *Pengamalan Pancasila*, Jakarta: CICS.
- [5] Bagir Manan, *Teori dan Praktek Konstitusi*, Direktorat Jenderal Pendidikan Tinggi Departemen Pendidikan Nasional, 2000.
- [6] Bahar Saafroedin, *Hak Asasi Manusia Analisa Komnas HAM dan Jajaran Hankam/ABRI*, Jakarta: Pustaka Sinar Harapan, p. 164, 1996.
- [7] Nanang Pamuji Mugasejati dan Ucu Martanto, *Pendahuluan Kritik Globalisasi dan Neoliberalisme*, Yogyakarta: FISIPOL UGM, p. 1, 2006.
- [8] GG Howard dan Rummer, *Lawa ist nature and limits*, New jersey: Prestic Hall, pp. 46-47, 1999.
- [9] An-Na'im Abdullah Ahmed (ed), *Human Right in Cross Cultural Perspective*, Philadelphia: University of Pemsylvania Press, 1992.
- [10] Paterson, *The law Loards*, London: Macmillan, 1994.

RECOMMENDATION

Based on the conclusions above, it can be recommended as follows:

- [11] P Nonet and P Selznick, *Law and Society in Transitio: Toward Responsive Law*, New York: Harper and Row, 1978.
- [13] Roberto M Unger, "Law and modern society: Toward a criticism of social theory", translated by Dariyatno dan Derta Sri Widowatie, 2012.
- [14] Satjipto Rahardjo, *Ilmu Hukum*, Bandung: PT Citra Aditya Bakti, 1991.
- [15] R Dworkin, *Taking Rihts Seriously*, London: Duckworth, 1987.
- [16] Nanang Indra Kurniawan, *Masyarakat Dunia, Globalisasi dan Nation-State*, dalam Nanang Pamuji Mugasejati dan Ucu Martanto, *Kritik Globalisasi & Neoliberalisme*, Yogyakarta: FISIP UGM, p. 36, 2006.
- [17] John M. Echols dan Hassan Shadily, *Kamus Inggris Indonesia*, Jakarta: Gramedia Pustaka Utama, Cet. XXIII, Desember, p. 271, 1996.
- [18] Haedar Nashir, "Sains, Modernitas, dan Kemanusiaan", dalam *Jurnal Inovasi*, No. 1 TH. VIII, p. 6, 1998.
- [19] B. Herry Priyono, "Rakyat dalam Pusaran Globalisasi", *Kompas*, p. 4-5, August, 9 2002.
- [20] German Bishop's Convergence Research Group on the Universal Tasks of the Church, *The Many Faces of Globalization: Perspective for Human World Order*, Bonn: January, p. 11, 2000.
- [21] B. Herry Priyono, "Rakyat dalam Pusaran Globalisasi", *Kompas*, p.12, August, 9 2002.
- [22] Martin Albrow, *Travelling Beyond Local Culture*, Malden: Blackwell, 2000.
- [23] J Rawl, *A Theory of Justice*, Oxford: University Press, 1985.
- [24] Robert A. Dahl, *Democracy and Its Critics*, New Haven: Yale University, 1981.
- [25] J. J. H. Bruggink, *Refleksi tentang Hukum*, Alih Bahasa Arief Sidarta, Bandung: PT Citra Aditya Bakti, 1996.
- [26] Manfred B. Steger, *Globalisme: Bangkitnya Ideologi Pasar*, terj. Heru Prasetyo, Yogyakarta: Lafadi Pustaka, p. 7, 2006.
- [27] Paul Hirst & Grahame Thompson, *Globalization in Question*, terj. P. Soemitro, Jakarta: Yayasan Obor Indonesia, p. 1-2, 2006.
- [28] Mahmud Thoha, *Globalisasi, Krisis Ekonomi dan Kebangkitan Ekonomi Kerakyatan*, Jakarta: Pustaka Quantum, p. 1, 2002.
- [29] *Journal of Ministry of State Secretary of State*: 124, 2012.
- [30] Hassan Suryono, *Pancasila Progressif*, Surakarta: Pustaka Cakra, pp. 210, 2005a.
- [31] Hassan Suryono, *Hukum Kenegaraan Perundang Undangan*, Surakarta: UNS Pers, pp. 211, 2005b.