Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.38, 2015

Human Rights Concept in Indonesia: How is It Governed?

Nur Asmarani
PhD Student - Postgraduate Hasanuddin University and Lecturer at Cendrawasih University, Papua.

Abstract
End of World War II was a great moment for development of Human Rights internationally. The indication of it could be seen by the establishment of Universal Declaration of Human Rights. Indonesia itself as part of state parties who ratified the Declaration has implemented the Declaration into its regulation such as Amandement of Indonesian Conctitution Article 28 (A-J), the Law No. 39 year 1999 Concerning Human Rights, the Law No. 26 Year 2000 Concerning Human Rights Court, and other relevant regulation.
Keywords: Human Rights Concept, its Regulation

1. Introduction

End of World War II was a great moment for the development of Human Rights internationally. It is characterized by the establishment of the United Nations (UN) in 1945 and the declaration of the Universal Declaration of Human Rights (hereinafter referred to UDHR 1948).
UDHR declared by the United Nations have an influence on the protection of Human Rights in which many countries are adopting the provisions as set out in the UDHR. Development of UDHR has received international commitments of the countries in the world particular when it held the World Conference on Human Rights in Vienna in 1993, known as the Vienna Conference.
Indonesia itself as an independent state has formulated human rights based on its fundamental and value of state called Pancasila. The values of the nation can be found out through the cultural values of the nation of Indonesia. It is stated in the Preamble of the Constitution of 1945 in the first paragraph. The preambule states that "freedom is the right of all nations, and therefore the occupation over the world should be abolished because it does not conform with humanity and justice".
The first paragraph is the founder of the commitment of Indonesia as a collective right of the people to freedom (right to self-determination). It is basically a gift of God that must be fought. The commitment itself can be seen collectively from the first paragraph to the third paragraph. This commitment also is certainly a prerequisite for the Indonesia as nation to freely carry out development and create himself both as individuals and as a nation to enforce human rights. It is natural that fought either by individuals or by groups of people for the purpose of equitable and prosperous life.[1]

In addition, it also contains some human rights concepts as mentioned to the purpose of the establishment of Indonesia as the government's obligations to fullfil. This aim is stated in the Constitution as follows: "a government will protect the entire Indonesian either as a nation or the entire country of Indonesia and to participate in the establishment of world order based on freedom, peace, and social justice ".
Then in the fourth paragraph mentioned that the sovereignity right of the people based on principles of Pancasila as the the basic fundamental of state.Pancasila basically already contains a human rights values upheld by the nations in the world which is the basis of human rights. The basis of Indonesia, Pancasila, therefore is the state of human rights itself.[2]

[1] Notonagoro, *Pancasila: Fundamental Philosophy of the State*, Bina Aksara, Jakarta, 1983, pp.43-44.
[2] Categorization of human rights can be seen in the formulation of the principles of Pancasila as follows: *First*, "belief in one God". It contains the divine principle, a belief in the existence of "first cause" is not caused by and is not the cause of everything that exists." The state obliges its citizen to believe to God. It means that atheism (does not believe in God) is prohibited in Indonesia. This is the basic of human rights principle to allow its citizens to have a religion. It is namely the right to freedom of religion and worship. *Second*, "just and civilized humanity." The principle of humanity is the recognition of human dignity as the basis of the intrinsic nature of human rights as liberal individualist. The essence of it is to locate people either as private (individuals) or as social human beings. It is understand also that people is built physically and spiritually. *Third*, "Unity of Indonesia." The principle contains a unity in diversity. It appears in the slogan "Bhinneka Tunggal Ika", namely the unity of the Indonesian people from various ethnic groups, so that personal attitude needs to be uninstalled. The fact of plurality needs to be preserved, but there are things that need to be together in one unit. What is desired is unity and not uniformity. *Fourth*, the "Populist led by the inner wisdom of deliberations representative." The principle contains the basic priciple of democracy. The community is free to determine the direction of travel of the nation through a deliberation. *Fifth*, "Justice for all Indonesian people." The principle contains social justice principles, the development of Indonesian society, and collectivist-social nature. In addition to the political equality, then in the economic and social field are also equal. In terms of it, human beings as an individual is free to meet the necessities of life which is its rights. Human being as a part of their society are also being jointly others to do everything in the society. Balance and harmony become the principle for the realization of social justice.

2. The Governing of Human Rights in Indonesian Regulation

The development of human rights in Indonesia basically has been governed in Indonesian Constituion 1945. It is however not yet listed in a transparent manner. After the reform movement in 1998, the People's Consultative Assembly (MPR) has set MPR Decree No. XVII / MPR / 1998 on Human Rights. Furthermore, the decree was enacted through the Law No. 39 of 1999 on Human Rights.

As we know, the Constitution of 1945 (UUD 1945) has been amended 4 (four) times. In the second amandement of the 1945 Constitution in 2000, the concept of human rights has been governed in detail and explicitly stated in Chapter X A, article 28A - J.

The further governing concerning human rights spelled out in the Law Number 17 Year 2007 on the National Long Term Development Plan which states that the Long-Term Development Direction 2005-2025 mentioned in point IV.1.3. namely to realize a democratic Indonesia based on law, as mentioned in item 6 which, among others, the rule of law and human rights.

Law enforcement of human rights, especially gross human rights violations was regulated in the Rome Statute of 1998, which was enacted effectively since July 1, 2002 in which the Rome Statute has been ratified by some 60 countries. The Rome Statute actually became the founding cornerstone of the International Criminal Court (ICC) permanently. The aim of the ICC to be established by the United Nations (UN) was to respect to the maintenance of international peace and security.

In contrast to the ICC as a permanent of international criminal court to prosecute gross violations of human rights, there is also non permanent international court (ad hoc), called as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). ICTY is an International court to judge serious human rights violations in the territory of the former Yugoslavia, while the ICTR is an International Court to judge the events that occurred in 1994, when the majority Hutus committed genocide against the Tutsi ethnic group.

Indonesia as a member of the United Nations shall be subject to the rules imposed by the UN. In connection with the settlement of human rights violations, therefore, it had enacted the Law No. 39 of 1999 on Human Rights and its Official Gazette of the Republic of Indonesia Year 1999 No. 165. Furthermore, it was followed by the enactment of the Law No. 26 Year 2000 regarding Human Rights Court and its Official Gazette of the Republic of Indonesia 2000 No. 208, replacing the Government Regulation in Lieu of Law No. 1 of 1999. The government Regulation in Lieu was replaced because it did not cover retroactive principle to uncover past crimes.

The existence of the Law No. 26 of 2000 as legislation to resolve the gross human rights violations, the retroactive principle is also applied in addition to the principle of legality. The principle of retroactivity applied to gross human rights violations before the promulgation of the Law No. 26 of 2000, while the gross human rights violations occurred after the enactment of the Law No. 26 of 2000 was settled by the Court of Human Rights. The settlement of gross human rights violations before the enactment of the Human Rights Court is done through the Human Rights Court or settlement by the Truth and Reconciliation Commission.

Regarding the establishment of a Truth and Reconciliation Commission then the government issued the Law No. 27 Year 2004 on the Truth and Reconciliation Commission (TRC). But on his way to the TRC, the legislation has been cancelled by the Constitutional Court through its decision No. 020 / PUU-IV / 2006: Judicial Review of the Law No. 27 Year 2004 on the Truth and Reconciliation Commission (TRC).

Even if the the Law No. 27 Year 2004 on TRC has been cancelled by the Constitutional Court but the existence of this institution is very important. Then, as an alternative to resolve cases of gross human rights violations can be done through a restorative justice approach.

Restorative Justice is a policy that is relatively new and still sectoral however, the policy is in accordance with the UN Declaration held in 2000 as stipulated in United Nations Declaration on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. In the declaration of the United Nations has recommended that each country is utilizing the concept of restorative justice more broadly in a criminal justice system. It was then affirmed in the Vienna Declaration, Document: A / Res / 55/59. In the Vienna Declaration on Crime and Justice, Meeting the Challenges of the Twenty-first Century (Vienna Declaration), which is distributed to the public stairs January 17, 2001 under number 27 and number 28 as follows:

27. We Decide to introduce, wher Appropriate, national, regional and international action in support of plants victim of crime, such as mechanisms for mediation and restorative justice, and we established in 2002 as a target date for States to revieuw Reviews their relevant practices, to develop further victim support services and awareness compaigns on the rights of victims and to Consider the establishment of funds for victims, in addition ang implementing witness protection policies.
28. We encourage the development of restorative justice procedures and programmers polities that are respectful of the rights, needs and interests and victims, offenders, communities and all other parties.

Likewise, the Eleventh United Nations Congress on Crime Prevention and Criminal Justice held in Bangkok in 2005, has been reaffirmed restorative approach. The Bangkok Declaration number 32 under the heading "Synergies and Responses: Strategic Alliances in Crime Prevention ang Criminal Justice" states that "to promote the interests of victims and rehabilitation of offenders, we recoqnize the importance of further developing restorative justice policies, procedures ang programmes that include alternatives to prosecution, there by avoiding possible adverse effects imprisonment, helping to decrease the caseload of criminal courts and promoting the incorporation of restorative justice approaches into criminal justice system , as appropriate".

Restorative justice has actually been around since the first in which the indigenous peoples there, which is reflected in resolving problems or conflicts that arise amongst the people. The settlement is done in negotiating or deliberation which then results agreed upon by the parties to the conflict. This means that in this case the perpetrators and the victims agree and approve the results so no body is impaired. In terms of the gross human rights violations, of course, it is possible to be resolved through a restorative justice approach, involving victims, offenders and the community.

The settlement of gross human rights violations through the Human Rights Court did to the East Timor case, the case of Tanjung Priok and Abepura case, and its implemention ad hoc Human Rights Court held in Jakarta for the case of East Timor and Tanjung Priok case, while the Abepura case heard by the Ad Hoc Human Rights Court in Makassar. Meanwhile there are still cases that have been uncovered by the National Commission on Human Rights as cases of Trisakti, Semanggi, Event 1998 riots, Wamena cases and cases Wassior are not acted upon by the Attorney General.[1]

Associated with gross human rights violations in Papua, which was reported by the Institute for the Study of Human Rights and Advocacy (ELS-HAM) Papua[2] and who have raised the Papuan Congress II in 2000 in Jayapura that severe human rights violations that occurred in Papua have political dimensions associated with the aspirations of the majority Papuans who want to secede from the Republic of Indonesia (NKRI).[3]

Further disclosed in political decision incorporation of Papua, (then known as the Nederlands New Guinea) became part of the Unitary State of the Republic of Indonesia since 1963 has not yet resulted welfare, prosperity and state recognition of the basic rights of Papuans. The conditions of Papua society in the fields of education, economy, culture and socio-political are still a concern than the welfare enjoyed by most of the brothers in certain provinces in Indonesia. Besides fundamental issues such as human rights abuses (human rights) and an indication of the historical denial of the right of the people of Papua is still not resolved in a fair and dignified.[4]

The Law No. 21 of 2001 on Special Autonomy of Papua for Papua Province into consideration mandates that: Papuans as God's creation and part of a civilized people, uphold human rights, religious values, democracy, law, and values of cultures living in the community customary law, as well as having the right to enjoy the results of development. Furthermore, in terms of law enforcement and respect for human rights in Papua, containing the spirit of problem solving and reconciliation, among others, the establishment of the Truth Commission and Reconciliation. The establishment of the commission is intended to resolve the various problems that occurred in the past with the aim of strengthening national unity of Indonesia in Papua province.

The settlement of past gross human rights violations as mentioned above is done through a court that has not touched a justice of the people, while out of court settlement can not be performed because the rule has been cancelled by the Constitutional Court. This can cause a sense of distrust to law enforcement, especially against gross violations of human rights.

To answer the criminal law enforcement in general and against gross human rights violations in particular can be done with the existing sense of fairness in society. Form of justice that is actually expected that meet the real justice is good with regard to the interests of victims, offenders and the community became an important reference for consideration. The value of justice like this can be met through restorative justice. The existence of restorative justice according to many experts is not a new concept, even the rest of the existence of criminal law as stated by Marc Levin, that approach had declared obsolete, old-fashioned and traditional now it is declared as a progressive approach.[5]

Papua Province is one of the provinces that have special autonomy which is mandated to settle past gross human rights violations. Therefore, for the settlement of gross human rights violations with the restorative justice approach is important.

Restorative justice is essentially based on the philosophy cosmovision, which starts from the cosmological view that human life is a part of the life of the universe as a whole. The philoshopy of cosmovision basically contained

[1] Human Rights Study Center Indonesia Islamic University Yogyakarta, *Human Rights Law*, PUSHAM UII, Yogyakarta, 2008, pp.316-317.
[2] Ed. Agus Somule, *Looking for the Center Pathof Special Autonomy in Papua*, PT. Gramedia Pustaka Utama, Jakarta, 2003, pp.233-234.
[3] Ibid. p.234.
[4] Task Tim of Papua Province, *the Basic Argumentation to Draft the Law on Special Autonomy in Papua*, Jayapura, 2001, p. 1.
[5] Marc Levin, *Restoractive Justice in Texas: Past, present, and Future*, Texas Public Policy Foundation, Texas, 2005, pp. 5-7.

or worldview rooted in traditional societies in the past until today.[1]

3. Conclusion

The concept of human rights in Indonesia has grown along with the occurrence of human rights violations are categorized as either gross human rights violations and human rights violations. It has also been stipulated in various laws and regulations such as the Law on Human Rights and the Law on Human Rights Court.

References

Ed. Agus Somule, *Looking for the Center Pathof Special Autonomy in Papua*, PT. Gramedia Pustaka Utama, Jakarta, 2003.

Human Rights Study Center Indonesia Islamic University Yogyakarta, *Human Rights Law*, PUSHAM UII, Yogyakarta, 2008.

Levin, Marc, *Restoractive Justice in Texas: Past, present, and Future*, Texas Public Policy Foundation, Texas, 2005.

Notonagoro, *Pancasila: Fundamental Philosophy of the State*, Bina Aksara, Jakarta, 1983.

Surbakti, Natangsa, *Restoractive Court in Frame of Empiric, Theory, and Policy*, GentaPublishing, Yogyakarta, 2015.

Task Tim of Papua Province, *the Basic Argumentation to Draft the Law on Special Autonomy in Papua*, Jayapura.

Zehr, Howard, *the Little Book of Restorative Justice*, Pennysylvania-Intercourse, Good Books.

[1] Howard Zehr, *the Little Book of Restorative Justice*, Pennysylvania-Intercourse, Good Books. See Natangsa Surbakti, *Restoractive Court in Frame of Empiric, Theory, and Policy*, GentaPublishing, Yogyakarta, 2015, p. 44.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
http://www.iiste.org

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: http://www.iiste.org/journals/ All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: http://www.iiste.org/book/

Academic conference: http://www.iiste.org/conference/upcoming-conferences-call-for-paper/

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digtial Library , NewJour, Google Scholar