

Measuring Human Rights Legal Resilience in the Context of Ethnic Anti-Discrimination: Study of Universalism or Cultural Relativism?

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ABSTRACT

The enforcement of human rights norms in Indonesia is a form of legal transplantation, even though human rights are universal. Legal transplantation is partly caused by globalization, which breaks down the boundaries of the nation-state, thus integrating the law in a network of global value systems and causing various consequences, especially on the national law or local law. Human rights are one of the complex fields that are brought along in the current of globalization. Human rights offer a new approach to the national laws of various countries, especially those that ratify international agreements. One of them is transplantation of the human rights law of anti-discrimination, which is done voluntarily by the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination. The ratification was followed by the harmonization of human rights law against ethnic discrimination that provided domestic legal protection both through Article 28I paragraph (2) of The Constitution of the Republic of Indonesia of 1945 and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. However, the existence of global legal values can challenge the dominance of local values, so that the potential to marginalize or even replace. In the social and cultural context, they have the potential to trigger tension between indigenous (local) people and citizens of the nation who are considered migrants. Although the tension is not always in the form of physical conflict, for example in Yogyakarta, Chinese ethnic dissatisfaction arises over the enactment of the Instruction of the Governor of the Special Region of Yogyakarta (DIY) No.K/898/A/1975 on Uniforming Policy on Granting Rights to Land to a Non-Indigenous Indonesian Citizen. This paper aims to discuss the legal resilience of the results of transplants related to ethnic anti-discrimination human rights. Specifically, it explains whether the legislation of transplant results has succeeded in adapting to the conditions under which human rights are enforced, including when faced with cultural relativism.

Keywords: *legal resilience, human rights, ethnic anti-discrimination, cultural relativism, ethnic Chinese*

1. INTRODUCTION

The enforcement of human rights norms in Indonesia is a form of legal transplantation, even though human rights are universal. In this context, legal transplant is "the moving of a rule or a system of law from one country to another, or from one person to another".¹ The transplant of law is partly due to globalization, which breaks down the boundaries of the nation-state, which integrates law in a global value system network. It has various consequences, especially on national or local law. Human rights are one of the complex fields that are brought along in the current of globalization. Human rights offer a new approach to the national laws of various countries, especially those that ratify international agreements. The acceptance of human rights by the Indonesian people is a voluntary imposition. Transplantation of human rights law is carried out through the ratification of international agreements. One of them is transplanting human rights law against ethnic

discrimination by the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination.

Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination was carried out with the enactment of Law Number 29 of 1999 concerning Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965. The ratification was followed by the harmonization of human rights anti-discrimination laws that provide domestic legal protection, both through the constitution and derivative regulations. Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia regulates "each person has the right to be free from acts of discrimination based on what grounds ever and shall be entitled to protection against such discriminative treatment." While the regulations resulting from constitutional derivation are Law Number 40 of 2008

concerning the Elimination of Racial and Ethnic Discrimination.

However, the existence of global legal values can challenge the dominance of local values, so that the potential to marginalize or even replace. In a social and cultural context, it has the potential to trigger tension between indigenous (local) communities and citizens of the nation who are considered migrants, even though such tensions do not always involve physical conflict. Issues related to ethnicity, which until now still leaves questions, are namely ethnic Chinese. For example, in Yogyakarta, dissatisfaction arose over the enactment of the Instruction of the Governor of the Special Region of Yogyakarta (DIY) No.K/898/A/1975 on Uniforming Policy on Granting Rights of Land to a Non-Indigenous Indonesian Citizen. The Governor's instruction was considered as the implementation of special status matters based on the values of local wisdom regulated in Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta. Several ethnic Chinese have taken legal action against the Instruction, both through the administrative Court (PTUN/Pengadilan Tata Usaha Negara) lawsuit, judicial review to the Supreme Court, complaints to the National Commission on Human Rights, and also the Ombudsman of the Republic of Indonesia.

The reason for the enactment of the DIY Governor's Instruction is to protect the interests of indigenous Indonesian citizens, the majority of whom are of a lower economic level than non-native Indonesian citizens. It is feared that land in the Special Region of Yogyakarta is owned by many non-native Indonesian citizens, while native Indonesian citizens cannot own land in their own birthplace.² Indonesian society in general, there are still many who think that Chinese descent has advantages in the economic sector,³ while the reality is not the case. One example of the ethnic Chinese in West Kalimantan is different from the general description, which in general are small traders, shop owners, farmers, and fishers. Many ethnic Chinese in this province are poor residents.⁴ The Chinese ethnic is actually only one of the ethnic complexities that exist in Indonesia, which explains the ethnic position which has a sensitive position in the emergence of gaps in the implementation of human rights law against ethnic discrimination.

Legal resilience itself is a new terminology that is commonly used related to law and ecology⁵ or used for legal aspects related to psychology, for example, psychological assistance for law enforcement. The terminology for legal resilience adopts the term resilience as proposed by the Presidential Policy Directive on Critical Infrastructure Security and Resilience 2013. Discussing legal resilience means discussing the issue of how the law prepares and adapts to the changing conditions, as well as surviving and recovering quickly from interference. Based on the limitations of legal resilience, this article wants explicitly to discuss how the resilience of Law Number 29 of 1999 concerning Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 in a multicultural Indonesian society is? Has Law Number 29

of 1999 been successfully adapted, including when faced with cultural relativism?

2. HARMONIZATION OF LEGISLATION RELATING TO THE ELIMINATION OF ETHNIC ANTI-DISCRIMINATION

Globalization has led to a more homogeneous legal order and is produced through harmonization. Larry Catá Backer argues that "globalization creates great incentives toward harmonization".⁶ Esin Örcü clarifies "harmonization as a concept of bringing about harmony ... not only by eliminating diversity but also within diversity".⁷ The output of harmonizing the law varies greatly depending on the context of the nation-state. Harmonization requires efforts to overcome mismatches between foreign values and norms (models) accepted and those that have been persistent in society (recipient).

The acceptance of human rights in Indonesia and other countries may be pursued through the same means, such as the ratification of international agreements, but there may also be differences in harmonization. In monist states, treaties have the same status as domestic law. In this context, there is *de jure* automatic harmonization into domestic law over the ratification of the state against international agreements. In some other countries, they do not make international self-executing agreements, and as such, the dualist system requires implementation through legislation. Indonesia seems to be factually following the dualist system, so it needs legislation to harmonize through legislation ratifying international agreements on human rights.⁸

Indonesia has ratified the "International Convention on the Elimination of All Forms of Racial Discrimination" on July 25, 1999, with ratification through Law Number 29 of 1999 concerning Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965. Law Number 29 of 1999 was enacted before the second amendment to the 1945 Constitution, which included human rights material related to anti-discrimination rights in Article 28 I paragraph (2). Ratification shows that Indonesia, as a party to the Convention has agreed to guarantee the fulfillment of the right to anti-discrimination, even though Article 1 paragraph (2) of Law Number 29 of 1999 is stated if Indonesia makes reservations with Article 22 of the Convention. Article 1 paragraph (2) of Law Number 29 of 1999 explains:

"Copies of the original International Convention on the Elimination of All Forms of Racial Discrimination 1965 and Reservation (Requirements) of Article 22 in English and the translation in Indonesian as attached are an integral part of This law. "

Reservation of Article 22 of this Convention is part of the harmonization of law. In the process of harmonizing human rights law, the state might be able to be resistant by

doing a number of things, namely failing to ratify international human rights treaties, ratifying treaties by reservation or declaration, refusing to accept the jurisdiction of supranational law enforcement bodies, and neglecting to execute supranational law enforcement decisions. By reserving Article 22 of the Convention, the Indonesian government is of the opinion if disputes occur due to differences in interpretation or application of the contents of the Convention which are not resolved through negotiations or channels as stipulated in the Convention, will appoint the International Court of Justice only based on the agreement of the parties to the dispute.

Several things become the background of Indonesia ratifying the International Convention on the Elimination of All Forms of Racial Discrimination 1965. First, Indonesia guarantees all citizens from all forms of racial discrimination as mandated by Pancasila as philosophy and outlook on life and the Constitution of the Republic of Indonesia 1945 as a basic law. In addition, the elimination of all forms of racial discrimination is also a reflection of the Second Precepts of the Pancasila " Just and civilized humanity." Second, as part of the international community, Indonesia respects, appreciates, and upholds the principles and objectives of the Charter of the United Nations and the Universal Declaration of Human Rights. The Convention regulates the elimination of all forms of distinction, exclusion, restriction or preference based on race, color, ancestry, national origin or ethnicity which have the purpose or effect of negating or obstructing the recognition, acquisition or implementation on an equal basis of human rights and fundamental freedoms in the political, economic, social, cultural or other fields of public life. The International Convention on the Elimination of All Forms of Racial Discrimination basically does not contradict the Pancasila and the Constitution of the Republic of Indonesia of 1945. Third, regulations regarding the elimination of forms of racial discrimination are still inadequate to prevent, overcome, and eliminate the practices of racial discrimination, so they need to be improved. The improvement of national legislation, in addition to the implementation of the Pancasila and the implementation of the 1945 Constitution of the Republic of Indonesia, also aims to improve legal protection more effectively. Thus, the state guarantees the rights of every citizen to be free from all forms of racial discrimination. Indonesia's seriousness in efforts to promote and protect human rights, especially the right to be free from all forms of racial discrimination while enhancing Indonesia's positive image in the international world and strengthening the trust of the international community towards Indonesia.

Meanwhile, in its development, the 1945 Constitution of the Republic of Indonesia included human rights material in Articles 28A-28J, which was the result of the second amendment. The results of the amendment show that the Government of Indonesia is increasingly paying attention to and upholding human rights values. Specifically, protection against ethnic discrimination is regulated in Article 27 paragraph (1), Article 28B paragraph (2),

Article 28D paragraph (1), Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Article 27 paragraph (1):

"All citizens shall have equal status before the law and the government and hold without exemption the law and the government in esteem."

Article 28B paragraph (2):

"Each child has the right to live, grow up, and develop as well as the right to protection from violence or discrimination."

Article 28D paragraph (1):

"Each person has the right to recognition, security, protection, and certainty under the law that shall be just and treat everybody as equal before the law."

Article 28I paragraph (2):

"Each person has the right to be free from acts of discrimination based on what grounds ever and shall be entitled to protection against such discriminative treatment."

However, it is possible to impose restrictions on human rights under Article 28J which regulates "in exercising his rights and liberties, each person has the duty to accept the limitations determined by law for the sole purposes of guaranteeing the recognition and respect of the rights and liberties of other people and of satisfying a democratic society's just demands based on considerations of morality, religious values, security, and public order." Under Article 28 J, restrictions can be made by fulfilling 3 (three) conditions, namely: must be stipulated by law, guarantee recognition and respect for the rights and freedoms of others, to create justice.

Meanwhile, the legislation resulting from the derivation of the 1945 Constitution of the Republic of Indonesia, specifically regulating the elimination of ethnic anti-discrimination is Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. The law, which took effect on November 10, 2008, responds to the condition of Indonesian people who have multiple dimensions in terms of culture, religion, race, and ethnicity, which has the potential to cause conflict. Indonesia has experienced racial riots because of discrimination based on race and ethnicity, for example, discrimination in the world of work or socioeconomic life. Even racial and ethnic conflicts that have occurred are followed by harassment, vandalism, arson, fighting, rape, and murder (Explanation of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination).

The scope of actions categorized as a form of ethnic discrimination is regulated in Article 4 of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, as follows:

- a. treat discrimination, exclusion, restriction, or election based on race and ethnicity, which results in the revocation or reduction of recognition, acquisition or implementation of human rights and basic freedoms in the equality in the field of civil, political, economic, social and cultural; or
- b. show hatred towards people because of racial and ethnic differences in the form of acts:
 - 1) make writing or pictures to be placed, posted, or distributed in public places or other places that can be seen or read by others;
 - 2) make speeches, express, or throw certain words in public places or other places that can be heard by others;
 - 3) wear something on him in the form of objects, words, or pictures in public places or other places that can be read by others; or
 - 4) carry out the deprivation of life, ill-treatment, rape, obscene acts, theft with violence, or deprivation of liberty based on racial and ethnic discrimination.

Article 9 of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination reinforces the right of citizens to obtain equal treatment in fulfilling civil, political, economic, social, and cultural rights. Civil rights include the right to:

- a. free to travel and move and domicile within the territory of the Republic of Indonesia;
- b. leaving and returning to the territory of the Republic of Indonesia;
- c. maintain citizenship;
- d. forming a family, choosing a life partner and carry on the descent;
- e. own property in one's own name or with others;
- f. thinking, feeling, expressing and giving opinions freely;
- g. use any language freely;
- h. gather and associate freely and peacefully; and
- i. get information.

While what is meant by political rights, includes the right to:

- a. receive the same treatment before the law, judiciary, and other public administration bodies;
- b. get a sense of security and protection from the state against racial and ethnic violence whether physical, social, or psychological violence either caused by government officials or by certain individuals, groups, institutions or organizations;
- c. participate in government as in public activities at any level; and
- d. participate in defending the country

The scope of economic rights includes the right to:

- a. try to find a decent living in all regions of Indonesia;
- b. work, choose a job, have fair and desirable working conditions;
- c. get a decent salary in accordance with the work and payroll system;

- d. forming and becoming a member of a trade union;
- e. get protection against unemployment; and
- f. have housing.

The scope of social and cultural rights includes the right to:

- a. obtain health services, medication, social security, and other social services;
- b. have equal opportunity and treatment for all forms of public service;
- c. gain opportunities and participate in cultural, social, and economic events;
- d. get the same opportunity to express their culture;
- e. enjoy, get and obtain guarantees for the implementation of education and training aimed at educating and/or enhancing their skills, regardless of race and ethnicity; and
- f. organizing education without regard to racial and ethnic characteristics.

3. INDONESIAN CHINESE ETHNIC: INDIGENOUS OR NON-INDIGENOUS

Nasikun argues, horizontally, the structure of Indonesian society is marked by the reality of social unity based on differences in ethnicity, religion, customs, and regionalism. Ethnic, religious, cultural, and regional differences are often referred to as the characteristics of Indonesian society that is plural (plural societies). This plurality is used by Furnivall to describe Indonesian society in the Dutch East Indies era, which was divided into European, Chinese (the largest group among Foreigners), and natives.⁹ Nasikun further argues that the plurality of Indonesian society in the colonial context is different from the context after independence. Post-independence pluralism must be understood in the context of internal differences between indigenous groups. Since Indonesia's independence, Europeans have left the social system of Indonesian society. While plurality within the Indigenous group obtains a more important meaning, as stated by Furnivall.¹⁰

Thung Ju Lan, an expert on ethnicity and conflict from the Indonesian Institute of Sciences (LIPI), said the problem of the term indigenous is not derived from historical interpretations or the study of genetic biology.¹¹ As is known from a historical standpoint, there has been a massive migration of Chinese people to Indonesia, which began in the 13th century when the collapse of the Song Dynasty. The fall of the Ming Dynasty in the 17th century also caused many Chinese to move to Java so that the ethnic Chinese population in Java increased sharply.¹² However, Mary Somers Heidhues noted that the Chinese who lived in West Kalimantan were settlers who had lived for a long time even among that hereditary since the 18th century, not a stopover, and also not the result of Dutch colonialism.¹³ Meanwhile, according to Herawati Supolo-Sudoyo, a genetic scientist from the Eijkman Institute, explained that migration that affected the origin of the

racial inhabitants of the islands in Indonesia came from sub-Saharan African Continent, Austronesia expansion from the Taiwan region, and the Chinese Plain. In this case, the indigenous meaning is biased because, in fact, there is a mixture.

The term indigenous depends on the thoughts and construction of people who use the term. The term indigenous, which was originally used in the colonial period, has experienced a shift in the present. The term indigenous is actually close to "I have the right to rule," "I have the right to lead," "I am the leader of the largest group, so naturally I am the leader." The term indigenous is constructed on their attachment to what is considered valuable and becomes part of one's identity, but that attachment is not to humanity. Thung Ju Lan argues that sociologically, the question is not "why do Chinese people continue to be discriminated against," but "how long will the Chinese be regarded as non-indigenous".¹⁴

Nasikun classifies the Chinese people as one of the various ethnic groups in Indonesia. It is based on several things. Indonesia's plurality is due to Indonesia's geographical conditions, which divide an area of approximately 3,000 islands. These conditions forced the ancestors of the Indonesian people who first came in waves from the South China region about 2,000 years B.C. to apply in areas that were separated from each other. Geographical isolation causes population growth to become a unity of ethnic groups, which is more or less isolated from the unity of other ethnic groups. Each ethnic unity is united by emotional ties and sees themselves as a separate type. In general, they have the same language and cultural heritage by developing the belief that they have the same ancestry. Often these beliefs are supported by myths that live in society. Nasikun also quoted Geertz and Skinner's opinion on the number of ethnic groups in Indonesia, each of which mentioned more than 300 ethnic groups and more than 35 ethnic groups.¹⁵ Meanwhile, Sukarno himself once expressed his views on the ethnic groups "tribe in Javanese means *sikil*, foot. So the Indonesian people have many feet ... there are Javanese feet, Sundanese feet, Sumatran feet, Irian feet, Dayak feet, Balinese feet, Sumba feet, Chinese ancestry feet ... feet rather than one body, the body of the Indonesian people!"¹⁶

T.K. Oommen offers concepts related to ethnic and national understanding. Ethnicity is a collectivity whose members have the same lifestyle, history, and language, but their identification of the ancestral homeland is weak and risks disappearing altogether. If ethnic tries and succeeds in establishing a claim on the territory it occupies and with that territory the ethnic considers it to be a homeland, then that ethnic can be considered to be a nation. The nation is a collectivity that has succeeded in establishing claims against the territory it occupies. A nation is a combination of territory and culture, which then gives birth to the feeling of one nation.¹⁷

With the statement, T.K. Oommen is associated with the problem of Chinese people who immigrated to Indonesia, then continued to carry on the descent, claiming Indonesian territory as a homeland, thus the Chinese can be considered as Indonesian. Moreover, the Chinese tried

to assimilate with the native (local) people living in Indonesia, as was the case in the Suharto era when Chinese people had to mingle with local residents through mixed marriages or had to follow the policy of changing the name to Indonesian. Thus, Chinese citizens should be called part of the nation as the concept of the nation, according to T.K. Oommen. However, in reality, the recognition to be part of the Indonesian nation has not yet been fully obtained by the Chinese citizens.

Historically, Chinese citizens were the only immigrants who tried hard to become part of the Indonesian nation, ranging from the policy of forcing assimilation of mixed marriages, banning Chinese culture, changing the name or omission of Chinese names. Even from history in the 1980s, it has been seen how Chinese citizens made a movement pioneered by Junus Jahja trying to get a national identity by embracing Islam. It is considered a unifying factor in Indonesia and a solution to the Chinese problem in Indonesia.¹⁸ Even it was recognized by Maksum Pinarto as Chairperson of the Semarang City Council of the Chinese Islamic Association. Indirectly, Maksum Pinarto revealed that adopting the majority religion as a form of assimilation influenced the treatment given by other citizens to Chinese citizens. Even Maksum Pinarto stressed, since converting to Islam, he has never felt discrimination.¹⁹ It was also conveyed by Suryadi Suryadinata, who was the Chairperson of the Malioboro Entrepreneurs Association, that the Chinese were considered to be Indonesian. More effort is needed and is accompanied by goodwill from the ethnic Chinese to be entirely accepted as the Indonesian nation. The younger generation is expected to do more. Although according to Suryadi Suryadinata, there are concerns from some ethnic Chinese who have not done the same thing, while external ethnic Chinese are also not happy with their existence.²⁰

While in the state policy level, during the administration of President Habibie, Presidential Instruction Number 26 of 1998 was issued to Stop the Use of Indigenous and Non-Indigenous Terms, which prohibited the formal use of the terms original Indonesian citizens, descendants of Indonesian citizens, and the terms Indigenous and Non-indigenous. This Presidential Instruction is also aimed at the Governor/Regent/Mayor to carry out at least several things, namely:

1. stop the use of indigenous and non-native terms in all policy formulation and governance;
2. provide equal treatment and services to all Indonesian citizens and exclude distinctions in all forms based on ethnicity, religion, or race;
3. review and adjust all laws and policies and regulations.

In addition, on August 1, 2006, Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia was enacted. The Citizenship Act provides fresh air for the ethnic Chinese because it reinforces the status of every child born in Indonesia through the understanding of who is referred to as an Indonesian Citizen as regulated in Article 4 through Article 6. The existence of the Citizenship Act also has become an entry point racial and ethnic anti-discrimination human rights law. Concerning

the Chinese community, the formulation of the original Indonesian term, which does not make a distinction between racial or other ethnicities in the matter of recognition as citizens, affirms the elimination of discrimination as happened in the previous legal regime - at least before 2006. Before the issuance of the Citizenship Act, the Chinese community is in the "Proof of Citizenship of the Republic of Indonesia regime," which gives legal status as an Indonesian citizen who is "still being questioned" (status quo).²¹

4. YOGYAKARTA PRIVILEGES AND HUMAN RIGHTS ETHNIC ANTI-DISCRIMINATION: UNIVERSALISM OR CULTURAL RELATIVISM?

Yogyakarta privileges are based on Law Number 13 of 2012 concerning Yogyakarta Special Region Privileges, which are effective from August 31, 2012. There are 5 (five) functions that characterize Yogyakarta's privileges based on local wisdom values and siding with the people, which are regulated in Article 7, includes:

- a. the procedures for filling the positions, ranking, duties, and authorities of the Governor and Deputy Governor;
- b. DIY Local Government institutions;
- c. culture;
- d. land; and
- e. spatial.

As previously stated, up to now in Yogyakarta, the DIY Regional Head Instruction Number K898/I/A/1975 is still in force concerning the Uniformity of Policy on Granting of Land Rights to a Non-Indigenous Indonesian citizen dated March 5, 1975 and becoming a reference for the Regional Office of National Land Agency in and Land Office in DIY. According to Suyitno, a member of the Parampara Praja DIY, the issuance of DIY Regional Head Instruction Number K898/I/A/1975 Regarding Uniformity Policy on Granting Rights to Land to a Non-Indigenous Indonesian citizen has a historical background since the Dutch Colonial era.

Many indigenous people sell land to foreign companies, so regulation was issued, which forbade indigenous people to sell their land to foreigners. In addition, a reorganization was also carried out to grant land rights to ordinary people with strong rights. The issuance of the Instruction of the Regional Head of DIY Number K898/I/A/1975 Regarding the Uniformity of Policy on the Granting of Land Rights to a Non-Indigenous Indonesian citizen is considered to be a form of positive discrimination, namely discrimination carried out to eliminate existing discrimination. Inequality between the rich and the poor in Yogyakarta is still considered very high. The instruction will be enforced until the gap is thin, the conditions are balanced, and justice is equal. Although the explanation on this matter is not based on data, instead of the observation.²²

The explanation related to positive discrimination is different from what was delivered by Knut D.Asplun, Suparman Marzuki, Eko Riyadi.²³ Positive discrimination

is meant to treat people equally in different situations for positive reasons. For example, a man and a woman have the same qualifications in applying for a job, but the company decided to accept women because more men applied for the job. While the economic conditions of ethnic Chinese people vary, not all of them have a strong economic status. However, because they have ethnicities that are still considered non-indigenous, they still feel the impact of the enactment of the Instruction. When referring to the notion of positive discrimination in the Knut D.Asplun version, Suparman Marzuki, Eko Riyadi mentioned above, ethnic Chinese with a weak economy are also included in the scope of recipients of positive discrimination.

Suyitno further explained that the land in Yogyakarta entirely belongs to the Sultanate of Yogyakarta and the Pakualaman Duchy, which is then given to its citizens according to their needs on the basis of customary law. Implementation of this customary law can be analogous to the following: Indigenous groups A and B have different territories, with each having its own rules. People from indigenous group A are allowed to come and live in the territory of indigenous group B. However, people from indigenous community A do not have the same rights as indigenous people B. Even though the land purchased by non-native Indonesian citizens is not the customary land belonging to the Keraton/Palace, but from the historical point of view all land in Yogyakarta is owned by the palace. Based on the history of the origin of land ownership in Yogyakarta and the customary law that is still recognized in DIY, Suyitno considered that the policy of prohibiting non-native Indonesian citizens from owning land rights was not against the rules in Yogyakarta and also not in conflict with the Basic Agrarian Law.²⁴

Meanwhile, Article 7 paragraph (4) of Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta, mandates if the specialties are regulated further by *Perdais*/Special Region Regulations. At present, there are Special Region Regulation DIY Number 1 of 2017 concerning Management and Utilization of the Sultanate Land and Duchy Land. However, DIY Special Regulation No. 1 of 2017 does not regulate the special authority of DIY related to land, which distinguishes Indonesian citizens based on ethnic differences.

The implementation of customary law as applied in Yogyakarta as the basis for the enactment of the Regional Head Instruction DIY Number K898/I/A/1975 Regarding the Uniformity of Policy on Granting Rights to Land to a Non-Indigenous Indonesian citizen can be said to be one form of cultural relativism in human rights. Pranoto Iskandar believes cultural differences are one of the severe obstacles to the implementation of universal human rights.²⁵ The idea of cultural relativism holds that culture is the only source of validity of moral rights or rules. Human rights are deemed necessary to be understood from the context of local culture.²⁶ However, the next question is, does Yogyakarta fully apply cultural relativism?

Article 4 letter c of Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta explains that the regulation of DIY privileges is carried out

based on the principle of democracy, which is defined as the recognition, appreciation, and universal equality of human rights (Explanation of Article 4 letter c). Bertrand Ramcharan defines the concept of universality of human rights through simple questions. The answer to that question leads to the same answer, which in essence, humans do not want to be treated that is not in accordance with their choices. The universality of human rights is a conception of norms based on universal morality that has been adopted by the international community. The golden rule principle becomes a mirror of universal morality, which requires a person not to treat others as he himself does not want to be treated.²⁷ Article 16 letter a makes it clear how human rights are protected by Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta that "Governors and Deputy Governors are prohibited from making decisions that specifically benefit themselves, family members, or cronies, harming the interests generally, and disturbing groups of people, or discriminating against citizens or specific groups of people".

In 2017, Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta was conducted a judicial review by the Constitutional Court related to Article 18 paragraph (1) letter m of the DIY Privileges Act, and was terminated along the phrase "which includes, among others, educational history, work, siblings, wife, and children" are declared contrary to the 1945 Constitution after the amendment and do not have binding legal force. The decision was stated in the Constitutional Court Decision Number 88/PUU-XIV/2016, which contained several matters, namely:

1. Is a form of state interference in the domain of the Sultanate and Duchy of the Pakualaman authority, so that it is contrary to the principle of recognition and respect for the rights and origins of special or special government units in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia;
2. Cause legal uncertainty, thus contradicting Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia that "Each person has the right to recognition, security, protection, and certainty under the law that shall be just and treat everybody as equal before the law";
3. Judged to be discriminatory in nature and contrary to Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia that "Each person has the right to be free from acts of discrimination based on what grounds ever and shall be entitled to protection against such discriminative treatment." In addition, it is considered to violate the provisions of the Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW) in terms of the principle of equality of men and women.

Regarding the Constitutional Court Decision Number 88/PUU-XIV/2016, the Governor of DIY Sultan Hamengku Buwono X responded positively. The Sultan considered that the verdict showed that the state did not differentiate between men and women. The constitution also regulates whoever can become a leader. The Sultan

asked all parties to respect the Constitutional Court Decision as a high state institution in the Indonesian constitutional system. The Sultan emphasized that the Constitutional Court's ruling had nothing to do with the Keraton/Palace's internal regulations called *Paugeran*.²⁸ As is known, normatively, in the arrangement of the Ngayogyakarta Hadiningrat Palace, a Sultan must be male.²⁹ The Sultan's attitude is at least a recognition of the universality of human rights.

When looking back to the contents of *Sabdatama* Sultan Hamengku Buwono X on March 6, 2015, Sultan Hamengku Buwono X explicitly also sided with the equality of men or women which is a principle of universal human rights "*Sing disebut tedak turun kraton, sopo wae lanang utowo wedok, durung mesti diparengake ngleksanaake dhawuh kalenggahan. Kang kadhawuhake wis tinitik. Dadi yen ono kang omong babagan kalenggahan Nata Nagari Mataram, sopo wae, luwih-luwih pengageng pangembating projo ora diparengake, lir e kleru utowo luput*" (Anyone who is a royal descendant, male or female, is not necessarily granted royal authority. Those authorized have been appointed).³⁰

5. CONCLUSION

The enactment of Law Number 29 of 1999 concerning Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 is stronger when it is followed by various harmonization of national legislation both through changes in the constitution and its derivative regulations which regulates the elimination of racial and ethnic discrimination explicitly. Even the elimination of all forms of racial discrimination has been stated expressly as a reflection of the Second Precepts of the Pancasila "Just and civilized humanity." However, in reality, these various laws and regulations cannot adapt when faced with cultural relativism. DIY Regional Head Instruction Number K898/I/A/1975 Regarding the Uniformity of Policy on Granting Rights to Land to a Non-Indigenous Indonesian citizen remains binding on residents living in Yogyakarta. Differences in the meaning of the term positive discrimination also contribute to the enforcement of the Directive. Although Article 28J of the 1945 Constitution of the Republic of Indonesia has stipulated that positive discrimination may be applied only through the Law.

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