

## **The Controversy Between Universal and Particular Human Rights in The Context of Indonesia**

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### **ABSTRACT**

This study examines the dialectic between the concepts of universal and particular human rights in the Indonesian context. Through an analysis of legal documents, historical treatises, and constitutional practices, the study reveals how Indonesia developed a "contextual universalism" approach that harmonizes universal human rights values with national socio-cultural particularities. The study shows that the tension between the universality and particularity of human rights has been an inherent part of Indonesian human rights discourse since the 1957-1959 Constituent Assembly debates, long before the reform era. Islam and local culture have a significant influence in shaping Indonesia's particular conception of human rights, with Muslim scholars and mainstream Islamic organizations contributing to the reconciliation of universal human rights principles with Islamic values and local wisdom. The study identifies five main strategies used by Indonesia in harmonizing universal and particular human rights: the margin of national appreciation, cultural translation, a dialogical approach, mainstreaming human rights in public policy, and developing contextual human rights conflict resolution mechanisms. This research has important theoretical implications, challenging the rigid dichotomy of universalism versus relativism, strengthening the argument about multiple modernities in human rights discourse, and underlining the importance of vernacularization. In practice, Indonesia faces challenges in harmonizing regulations and strengthening human rights culture, but it also has opportunities to develop global human rights diplomacy and a transformative human rights model rooted in the values of Pancasila and Indonesian constitutionalism.

Keywords: Contextual Universalism, Particularity of Human Rights, Universal Human Rights

### **ABSTRAK**

Penelitian ini mengkaji dialektika antara konsep hak asasi manusia universal dan khusus dalam konteks Indonesia. Melalui analisis dokumen hukum, risalah sejarah, dan praktik konstitusional, studi ini mengungkapkan bagaimana Indonesia mengembangkan pendekatan "universalisme kontekstual" yang menyelaraskan nilai-nilai hak asasi manusia universal dengan kekhasan sosial-budaya nasional. Studi ini menunjukkan bahwa ketegangan antara universalitas dan kekhasan hak asasi manusia telah menjadi bagian yang melekat dalam wacana hak asasi manusia Indonesia sejak debat Majelis Konstituante 1957-1959, jauh sebelum era reformasi. Islam dan budaya lokal memiliki pengaruh yang signifikan dalam membentuk konsepsi khusus Indonesia tentang hak asasi manusia, dengan cendekiawan Muslim dan organisasi Islam arus utama berkontribusi pada rekonsiliasi prinsip-prinsip hak asasi manusia universal dengan nilai-nilai Islam dan kearifan lokal. Studi ini mengidentifikasi lima strategi utama yang digunakan oleh Indonesia dalam menyelaraskan hak asasi manusia universal dan khusus: margin apresiasi nasional, terjemahan budaya, pendekatan dialogis, pengarusutamaan hak asasi manusia dalam kebijakan publik, dan mengembangkan mekanisme penyelesaian konflik hak asasi manusia kontekstual. Penelitian ini memiliki implikasi teoretis yang penting dengan menantang dikotomi kaku universalisme-relativisme, memperkuat argumen tentang multi modernitas dalam wacana hak asasi manusia, dan menggarisbawahi pentingnya vernakularisasi. Dalam praktiknya, Indonesia menghadapi tantangan dalam menyelaraskan regulasi dan memperkuat budaya hak asasi manusia, tetapi juga memiliki peluang untuk mengembangkan diplomasi hak asasi manusia global dan model hak asasi manusia transformatif yang berakar pada nilai-nilai Pancasila dan konstitusionalisme Indonesia.

Kata Kunci: Hak Asasi Manusia Universal, Kekhasan Hak Asasi Manusia, Universalisme Kontekstual

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## **INTRODUCTION**

Human Rights (HAM) is a universal concept that has been a global discourse since the 17th century (Muhsinin, 2018). The development of thinking about human rights has undergone a long historical journey, starting with the Magna Carta in England, the United States Declaration of Independence in 1776, and culminating in the Declaration des droits de l'homme et du citoyen in France. However, the universality of human rights is often confronted with the context of a country's particular culture, religion, and local values (Yunazwardi & Nabila, 2021). This carta raises fundamental questions about the extent to which human rights values, which are claimed to be universal, can be applied in a national context that has historical, social, and cultural uniqueness. Indonesia, as a state of law (*rechtsstaat*) based on Pancasila and the 1945 Constitution, has its own views on the implementation of human rights. The debate on human rights in the Constituent Assembly of 1957-1959 reflects the complexity of interpreting human rights within the Indonesian context, where a dialogue between universal and particular views is evident. This debate is significant because it demonstrates that the discourse on human rights in Indonesia is not only shaped by the Western concept of human rights, but also grounded in the experiences of the Indonesian people as a nation that was once colonized and fought for independence (Hasanah, 2019).

The controversy between universal human rights and particular or national human rights is becoming increasingly relevant in the era of globalization, where interactions between countries are intensifying, while the strengthening of national identity is also becoming stronger (Aziz & Zakir, 2022). As a country that adheres to legal pluralism, with its cultural and religious diversity, Indonesia faces its own challenges in harmonizing universal human rights values with the particular values that have taken root in society (Lestari, 2020). These values can be seen in how Indonesia formulates human rights in its national regulations, such as Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts, which aim to accommodate universal human rights values while maintaining national characteristics. Efforts to harmonize universal human rights and particular human rights pose a challenge in themselves for developing countries like Indonesia, which have a long history of colonialism (Nazril et al., 2024). The experience of being a colonized nation has shaped a distinct perception of human rights that diverges from the Western concept of human rights. This is reflected in the arguments put forward by various factions in the Constituent Assembly, where human rights are not merely understood within the framework of positive legal legality, but as general principles rooted in the human desire to be protected from humiliation and oppression. Thus, human rights are not only seen as principles formulated in the constitution and protected by the state, but also as values that must be continuously fought for.

Comparative studies of human rights implementation in various countries reveal significant variations in their interpretation and application, influenced by the socio-political, historical, and cultural contexts of each country (Hakim & Kurniawan, 2022). Western European and North American countries tend to emphasize civil and political rights. In contrast, Asian countries, including Indonesia, often prioritize economic, social, and cultural rights, as well as the right to development (Sinurat et al., 2024). This difference in emphasis reflects the reality that although human rights are considered universal, their interpretation and implementation are still influenced by national needs and priorities. The conflict between the universality and particularity of human rights is also reflected in the debate on "Asian Values" that emerged in the 1990s. Several Asian countries, including Indonesia under the New Order, advocated for the concept of Asian values, which emphasized social harmony, respect for authority, and collectivism over individualism (Widyarini & Utama, 2024). This discourse is often used to justify restrictions on individual freedoms for the sake of economic stability and development.

Although the "Asian Values" discourse has been widely criticized as a justification for authoritarianism, this debate shows that there are significant differences in how different societies understand and apply human rights principles.

The universal human rights paradigm, rooted in the Western liberal-individualistic tradition, sometimes fails to accommodate the communal and spiritual dimensions characteristic of non-Western societies, such as Indonesia (Azhargany, 2020). In the Indonesian context, the concept of family and togetherness, reflected in the principle of cooperation, colors the understanding of human rights, where individual rights are not seen as separate from social responsibilities. Likewise, the spiritual dimension reflected in the first principle of Pancasila, "Belief in the One Almighty God," provides an ethical-religious foundation for interpreting human rights that is not entirely secular (Shodiq, 2021). It gives an interpretation of human rights in Indonesia that has unique characteristics, which may not always align with the universal understanding of human rights. The 1998 political reform provided significant momentum for the development of human rights in Indonesia (Anif & Dewi, 2017). The amendment to the 1945 Constitution led to broader constitutional recognition of human rights, encompassing not only civil and political rights but also economic, social, and cultural rights. This recognition reflects Indonesia's commitment to the universality of human rights, but its implementation remains influenced by Indonesia's particular context. For example, Article 28J of the 1945 Constitution imposes limitations on human rights based on moral considerations, religious values, security, and public order, reflecting Indonesia's unique understanding of the limits of human rights.

Global developments in human rights policy also show a shift from a rigid universalistic approach to one that is more sensitive to cultural context (Adinda et al., 2024). The Vienna Declaration of 1993 affirmed that "all human rights are universal, indivisible, interdependent and interrelated," but also recognized that "the significance of national and regional particularities and of different historical, cultural and religious backgrounds must be taken into account." This affirmation acknowledges that the universality of human rights does not necessarily imply uniformity in implementation, but rather can accommodate contextual diversity as long as the core principles are upheld (Anggraeni et al., 2025). In the context of international law, the debate between universality and cultural relativism in human rights has given rise to new, more nuanced approaches, such as 'contextual universalism' or 'pluralist universalism'. These approaches recognise that while the core values of human rights are universal, their implementation may vary according to the socio-cultural context of each society (Eko Nugroho, 2019). Indonesia, as a country with extraordinary ethnic, religious, and cultural diversity, is uniquely positioned to contribute to the development of a human rights approach that harmonizes universal values with local wisdom. Thus, the controversy between universal and particular human rights need not be viewed as a rigid dichotomy, but rather as a dynamic dialectic that can produce a more comprehensive and contextual understanding of human rights.

This study focuses on several key issues related to the controversy between Universal Human Rights and Particular Human Rights in the Indonesian context. Specifically, this study examines the conceptualization of universal and particular human rights from the perspective of legal theory and their implementation in Indonesia, as well as the historical context in which the debate on the universality and particularity of human rights unfolded, particularly during the Constituent Assembly sessions of 1957-1959. In addition, this study also examines the process and strategy of Indonesia in harmonizing universal human rights values with particular values in state regulations and practices. It

examines the degree to which Islamic teachings and local culture shape the understanding of specific human rights in Indonesia.

This study aims to comprehensively analyze the conceptualization of universal and particular human rights from the perspective of legal theory and its implementation in Indonesia. Through historical studies, this research aims to explore the debate on the universality and particularity of human rights in the Indonesian context, with a particular focus on the discussion during the Constituent Assembly session. Furthermore, this study also aims to identify various strategies and approaches that Indonesia has used to harmonize universal human rights values with particular values. Moreover, this study aims to investigate the significant impact of Islamic teachings and local culture on shaping the understanding of specific human rights in Indonesia, and to analyze their implications for the protection of human rights as a whole within the context of a pluralistic state.

This research offers several benefits, both theoretically and practically. From a theoretical perspective, this research makes a significant contribution to the development of human rights theory, which accommodates non-Western perspectives, particularly from the Indonesian context, and enriches academic discourse on the dialectic between the universality and particularity of human rights in a country with diverse cultural and religious backgrounds. This research also provides an analytical framework for understanding the evolution of the concept of human rights within the context of Indonesian constitutional history. It develops a theoretical understanding of how religious values, particularly Islam, can contribute to the development of a contextual concept of human rights. From a practical perspective, this research provides a conceptual basis for policymakers in formulating human rights regulations that accommodate both universal and particular values, and serves as a valuable reference for law enforcement agencies in interpreting and applying human rights principles contextually. In addition, this research can assist civil society and non-governmental organizations in advocating for human rights protection that is sensitive to the local context, and contribute to the development of human rights education that integrates universal and particular perspectives, making it more relevant to the socio-cultural context of Indonesia.

## **LITERATURE REVIEW**

### **Conceptualization of Universal Human Rights and Particular Human Rights**

Universal human rights are based on the premise that every human being, regardless of their cultural, religious, and geographic background, has rights inherent solely by virtue of their status as a human being (Maylani et al., 2022). However, Donnelly also acknowledges that there is room for weak relativism that allows for different interpretations and implementations of human rights according to local contexts without rejecting their fundamental principles. The idea of universal human rights is often associated with the Western liberal tradition. Fatwa (2023) states that the modern concept of human rights is rooted in the European Enlightenment, which emphasized rationality, individualism, and autonomy. However, Raharjo et al. (2025) demonstrate that the concepts of freedom, justice, and human dignity are found in various philosophical and religious traditions worldwide, including those in Asian traditions. On the other hand, the interpretation and implementation of human rights must take into account the diversity of cultures, histories, and local values. This approach, often referred to as 'Asian Values,' gained momentum in the 1990s with the Bangkok Declaration (1993), which emphasized the importance of national and regional contexts in the implementation of human rights.

### **Human Rights in Indonesian Perspective**

The study of human rights in the Indonesian context has its own dynamics. How Indonesia, a country with cultural and religious diversity, attempts to incorporate universal human rights principles into its constitutional and legal framework (Khairunnisa, 2018). Indonesia adopts a "contextual universalism" approach, recognizing the universal values of human rights while upholding the particular values rooted in Pancasila. The debate on human rights in the 1957-1959 Constituent Assembly was a pivotal moment in the history of human rights in Indonesia, as groups with diverse ideologies, including nationalists, Islamists, and socialists, negotiated a concept of human rights that was appropriate to the Indonesian context (Nugroho, 2023). This debate reflects the tension between the universalist view, represented by the progressive group, and the particularist view emphasized by the conservative group, regarding the development of the concept of human rights in Indonesia from the independence era to the reform era (Widyawati Boediningsih & Novi Prameswari Regina Dermawan, 2023). They emphasized that since the Reformasi in 1998, Indonesia has undergone a significant transformation in human rights regulation, marked by the inclusion of comprehensive human rights articles in the amended 1945 Constitution and the establishment of various human rights institutions, including the Human Rights Court.

### **The Influence of Islam and Local Culture on the Conception of Human Rights in Indonesia**

The study of Islam's influence on the concept of human rights in Indonesia has become a focus of several scholars. How Indonesian Muslim thinkers, such as Nurcholish Madjid and Abdurrahman Wahid, have successfully reconciled the universal values of human rights with Islamic teachings (Mustofa et al., 2021). They introduce a contextual approach to interpreting religious texts that allows for compatibility between Islam and modern human rights. How Javanese cultural values, such as harmony (*rukun*) and hierarchical respect, influence the way Indonesian society understands and practices human rights (Syswayanti, 2013). The communitarian approach, which emphasizes collective rights and social obligations, often clashes with the liberal concept of human rights that emphasizes individual rights (Auliasari et al., 2025). This approach shows that Islamic civil society organizations, such as Nahdlatul Ulama and Muhammadiyah, play a role in promoting human rights that are compatible with Islamic values. They argue that this bottom-up approach is more effective in developing a culture of human rights rooted in the local context compared to the top-down approach, which is often perceived as an imposition of Western values.

### **Harmonization of Universal and Particular Human Rights in State Policy**

Efforts to harmonize universal and particular human rights have become a challenge for many countries, including Indonesia (Dwi et al., 2024) analyzes how ASEAN countries, including Indonesia, try to adopt international human rights instruments while maintaining the "ASEAN Way" which emphasizes state sovereignty and non-intervention (Arifin & Lestari, 2019) identify several strategies used by Indonesia in harmonizing universal human rights values with particular values. These strategies include: (1) being selective in ratifying international human rights instruments, (2) translating universal human rights concepts into local languages that are better understood by the community, and (3) developing conflict resolution mechanisms that are in accordance with local traditions for cases of human rights violations (Utomo, 2016) analyzes how Indonesian national legislation such as Law No. 39 of 1999 on Human Rights tries to accommodate universal human rights values while maintaining national characteristics. He argues that despite significant progress in the

human rights legal framework in Indonesia, its implementation is still influenced by particular interpretations that are often based on political and socio-cultural considerations.

### **Contemporary Challenges in Bridging Universal and Particular Human Rights**

The digital era and globalization have brought new challenges to the discourse on universal and particular human rights (Tobing et al., 2024). It demonstrates how global economic forces and digital technologies have given rise to new forms of human rights violations that transcend national borders, and it raises questions about how universal human rights principles can be applied in a transnational context. In Indonesia, analyzing (No & December, 2024) how the country responds to digital human rights issues, such as data privacy, online freedom of expression, and digital literacy. They identified tensions between a universal approach that emphasizes internet freedom and a particular strategy that emphasizes national security and social harmony. Another challenge is integrating the Sustainable Development Goals (SDGs) with the human rights agenda. Patra (2022) argues that a human rights-based development approach requires harmonization of universal human rights standards with national development priorities. They demonstrate how Indonesia utilizes Pancasila as a philosophical foundation for integrating human rights into its national development agenda, and how an Islamic feminist approach can bridge the universal values of gender equality with local religious and cultural interpretations, thereby creating a more inclusive and contextual human rights framework.

## **RESEARCH METHODS**

### **Research Approach**

This study employs the normative legal method as the primary framework for examining the controversy between Universal Human Rights and Particular Human Rights in the Indonesian context. The normative legal approach was chosen because of its suitability in analyzing legal problems through a study of written legal norms, legal principles, and related human rights. As stated by Soerjono Soekanto and Sri Mamudji (2019), the normative legal method enables researchers to study law at the level of legal dogmatics and legal theory, which is highly relevant to the focus of this study, which seeks to understand the conceptualization of human rights within the Indonesian legal framework. This study also integrates a socio-legal approach to gain a more comprehensive understanding of how human rights norms interact with the social, cultural, and religious contexts in Indonesia. This approach enables researchers to examine not only the formal aspects of human rights law but also the sociological and anthropological dimensions that shape the interpretation and implementation of human rights in a pluralistic Indonesian society.

### **Data Types and Sources**

This study utilizes secondary data as the primary source of information. The secondary data used consists of three main categories. First, primary legal materials covering laws and regulations related to human rights, starting from the 1945 Constitution (especially the amendments containing human rights articles), Law No. 39 of 1999 concerning Human Rights, Law No. 26 of 2000 concerning the Human Rights Court, to international human rights instruments that have been ratified by Indonesia such as the ICCPR (International Covenant on Civil and Political Rights), ICESCR (International Covenant on Economic, Social and Cultural Rights), and CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). The minutes of the 1957-1959 Constituent Assembly session are also crucial primary legal materials in this study, given the historicity of the human rights debate in the development of Indonesian constitutionalism. Second, secondary legal materials consisting of scientific publications on universal and particular human rights, including

books, academic journals, research results, and scientific articles. These secondary legal materials provide a theoretical basis and critical perspective on human rights discourse in both the global and Indonesian contexts. Third, tertiary legal materials such as legal dictionaries, human rights encyclopedias, and other reference sources help clarify the concepts and terminology used in the research.

### **Data collection technique**

Data collection in this study was conducted through a comprehensive documentation study of various written sources related to universal and particular human rights. Legal document searches were conducted in several libraries and legal documentation centers, including the National Library, the Constitutional Court Library, and the Legal Documentation Center of the Faculty of Law at the University of Indonesia. To obtain the minutes of the Constituent Assembly session, the researcher accessed the national archives and special collections at the LIPI library. Additionally, academic literature searches were conducted through electronic journal databases, including HeinOnline, JSTOR, and ProQuest, to retrieve the latest international articles on universal and particular human rights discourses. National databases such as the Indonesian Publication Index and Garuda were also utilized to obtain scientific publications in Indonesian. To enrich the understanding of the interpretation of human rights in the context of local religion and culture, the researcher also collected publications from religious organizations such as Nahdlatul Ulama and Muhammadiyah, as well as cultural study centers at various universities. All data collected was then systematically organized based on themes and chronology to facilitate analysis.

### **Data Analysis Techniques**

The collected data were analyzed using several techniques that are in accordance with the characteristics of normative legal research. First, content analysis was applied to legal texts and policy documents to identify the concepts and principles of human rights contained therein. This technique allows researchers to uncover the explicit and implicit meanings of the formulation of human rights in various legal instruments, both national and international. Second, historical-legal analysis was employed to understand the evolution of the concept of human rights within the context of Indonesian constitutional history, particularly in the debates surrounding the Constituent Assembly. This analysis helps to uncover the historical roots of the tension between the universality and particularity of human rights in the formation of Indonesia's constitutional identity. Third, a comparative legal analysis was applied to compare the conception of human rights in international instruments with the formulation of human rights in Indonesian national law, allowing for the identification of similarities, differences, and adaptation processes that occur. Fourth, hermeneutic analysis was employed to interpret human rights legal texts within the social, cultural, and religious contexts of Indonesia, considering pre-understanding, horizon fusion, and contextuality. This approach enables a deeper understanding of how specific values interact with universal human rights principles.

### **Theoretical Framework**

This study relies on several main theoretical frameworks to analyze the controversy between universal and particular human rights. The theory of universalism-relativism of human rights, as developed by Jack Donnelly, is the basis for understanding the spectrum of positions in the global human rights discourse, ranging from strong universalism to strong relativism. This theory helps identify Indonesia's position on the spectrum and understand the dynamics between universal and

particular values in the implementation of human rights. The theory of legal pluralism, as developed by John Griffiths and Sally Engle Merry, is employed to analyze the interaction between the international human rights legal system, the national legal system, and customary/religious law in Indonesia. The concept of "vernacularization" by Sally Engle Merry is also applied to understand the process of translating the idea of universal human rights into the local context of Indonesia.

The theory of transformative constitutionalism, as proposed by Karl Klare and Upendra Baxi, is a framework for analyzing how the post-amendment Indonesian Constitution accommodates universal human rights values while maintaining a constitutional identity derived from particular values. This theory helps understand the transformation of Indonesian human rights law as a dialectical process between universalism and particularism. The theory of *maqasid al-shari'ah*, from contemporary Islamic thought, such as that of Jasser Auda, is used to analyze how human rights values are negotiated in the context of Islamic law and religious practices in Indonesia. This approach enables researchers to identify points of convergence and divergence between universal human rights and Islamic values, which are one of the sources of particular human rights in Indonesia.

### **Validity and Reliability**

To ensure the validity and reliability of the research, several strategies were applied in the research process. Triangulation of data sources was carried out by comparing information from various types of sources, including legal documents, academic literature, and publications from civil society organizations, to verify the consistency of the findings. Peer review was carried out by involving human rights law experts, constitutional historians, and Islamic studies scholars to provide critical input on the analysis and interpretation of the data. Methodological transparency was maintained by documenting the data collection and analysis process in detail, allowing other researchers to evaluate and replicate the research. Member checking was applied in a limited context by consulting the researcher's interpretation of historical data with historical actors or living eyewitnesses, particularly in the context of the human rights debate during the Constituent Assembly. Reflexivity was maintained throughout the research process by being aware of the researcher's epistemological position and theoretical assumptions that could influence the interpretation of the data. By implementing these strategies, the research seeks to produce an analysis that is credible, trustworthy, and contributes meaningfully to the discourse on human rights in Indonesia.

## **RESULTS AND DISCUSSION**

### **Conceptualization of Universal and Particular Human Rights in the Indonesian Context**

Analysis of legal documents and academic literature reveals that the conceptualization of human rights in Indonesia has undergone a complex dialectical process between universal and particular values. The Indonesian Constitution, particularly after its amendments, reflects an attempt to synthesize the universality and particularity of human rights. Article 28I, paragraph (1) of the 1945 Constitution, recognizes rights that cannot be reduced under any circumstances (non-derogable rights) as the universal concept of human rights. In contrast, Article 28J provides space for the limitation of human rights based on religious values, security, and public order, which reflects particularity. This formulation demonstrates that Indonesia adopts a "contextual universalism" approach, as stated by Nurdin (2023), where Indonesia recognizes the universality of human rights while implementing them within the national socio-cultural context. Law No. 39 of 1999 concerning Human Rights further clarifies Indonesia's position in the global human rights discourse. Article 2 of the Law states that "The Republic of Indonesia recognizes and upholds human rights and basic human

freedoms as rights that are inherent in and inseparable from humans," which aligns with the concept of universal human rights.

However, in the "Considering" section letter b it is stated that human rights "are basic rights that are inherently inherent in humans, are universal and eternal, therefore must be protected, respected, maintained, and must not be ignored, reduced, or taken away by anyone," followed by "That the Indonesian nation as a member of the United Nations bears the moral and legal responsibility to uphold and implement the Universal Declaration of Human Rights established by the United Nations, as well as various other international instruments concerning human rights that the Republic of Indonesia has accepted." This formulation demonstrates that Indonesia situates itself within the universal human rights framework while still asserting its sovereignty in determining which international human rights instruments to adopt. A study of Indonesia's ratification of international human rights instruments shows a selective pattern that reflects a balance between commitment to universal human rights and particular considerations.

Indonesia has ratified primary international human rights instruments, including the ICCPR, ICESCR, CEDAW, and CRC, but with several reservations that reflect its sensitivity to particular values. For example, in ratifying CEDAW, Indonesia made a reservation against Article 29 paragraph (1) on dispute resolution, reflecting caution against potential foreign intervention. This pattern is consistent with what Ruchliyadi (2011) calls "engaged selectivity," where non-Western states participate in the international human rights regime, engaging critically with it while taking into account their domestic context.

### **Reflection of The Human Rights Debate in the Constituent Assembly (1957-1959)**

A review of the minutes from the 1957-1959 Constituent Assembly session reveals that the debate on human rights in Indonesia had been ongoing since the early days of independence, long before the reform era. The Constituent Assembly, an institution mandated to draft a permanent constitution, became a forum for ideological struggle where the concepts of universal and particular human rights were negotiated. In the Constituent Assembly sessions, three primary schools of thought were identified regarding human rights: the secular-nationalist group that tended to adopt the concept of universal human rights, the Islamic group that emphasized the compatibility of human rights with Sharia but with some particular adjustments, and the socialist group that emphasized economic and social rights as a priority in the context of a developing country.

The National Progressive Faction, led by figures such as Soepomo and Muhammad Yamin, generally supported the adoption of universal human rights, with some adaptations to suit the Indonesian context. They argued that Indonesia, as a modern country, needed to adopt international human rights standards, but with consideration of the characteristics of Indonesian society, which was communalistic. Soepomo, for example, proposed the concept of an "integralist state," which viewed individuals as an organic part of society, suggesting that human rights should be interpreted within the framework of social harmony rather than liberal individualism. This approach reflects what Donnelly calls "weak relativism," which acknowledges the universality of human rights while allowing for interpretation and implementation tailored to local contexts.

The Islamic faction, represented by Masjumi and NU, emphasized that human rights must be formulated in consideration of Islamic values. Mohammad Natsir, a Masjumi figure, argued that the concept of universal human rights is actually compatible with Islamic teachings on justice and equality of human beings before God. However, he also emphasized that some aspects of universal human

rights, such as freedom of religion, which includes the right to change one's religion or not, need to be adjusted to the context of Indonesia as a predominantly Muslim country. Wahid Hasjim from NU added that human rights in the Indonesian context must reflect a balance between rights and obligations, in accordance with Islamic principles that emphasize individual responsibility towards society and God. This argument demonstrates what is called by Yusup (2024) as "Islamic universalism," in which the universal values of human rights are recognized but interpreted through an Islamic theological framework.

The Socialist faction represented by the Indonesian Socialist Party (PSI) and the Indonesian Communist Party (PKI) tends to emphasize the economic and social dimensions of human rights. They argue that in the context of a post-colonial state such as Indonesia, the primary priority is the fulfillment of economic and social rights, including education, health, and decent work. Sjahrir from PSI, for example, criticized the liberal concept of human rights, which overemphasized civil and political rights without adequately addressing the unjust economic structures inherited from colonialism. This approach aligns with the criticism of Third World countries of the international human rights regime during the Cold War era, as analyzed by Hanafi & Ansorullah (2021) in "Human Rights Standards: Hegemony, Law, and Politics." Although the Constituent Assembly did not complete its task due to its dissolution through the Presidential Decree of July 5, 1959, the human rights debate in this forum provides an essential historical foundation for understanding the dialectic between the universality and particularity of human rights in the Indonesian context. This debate demonstrates that the tension between universal and particular human rights has been an inherent aspect of human rights discourse in Indonesia since the country's independence, and is not merely a post-1998 Reformasi phenomenon or a response to contemporary globalization.

### **The Influence of Islam and Local Culture in the Formation of Particular Human Rights in Indonesia**

This study reveals that Islam and local culture have a significant influence on shaping the particular conception of human rights in Indonesia. In the context of Islam, there are systematic efforts by Indonesian Muslim scholars to reconcile universal human rights principles with Islamic values. Abdurrahman Wahid (Gus Dur), for example, developed the "indigenization of Islam" approach, which allows for the adaptation of Islamic principles, including human rights, within the local Indonesian context without compromising the substance of its teachings. Nurcholish Madjid developed the concept of "substantive Islam," which distinguishes between universal Islamic values and historical-particular formulations influenced by specific spatial and temporal contexts. This approach enables a more flexible and contextual interpretation of human rights, where universal principles such as justice and equality are maintained, but in a formulation tailored to Indonesia's socio-cultural context. Mainstream Islamic organizations such as Nahdlatul Ulama (NU) and Muhammadiyah also contribute to shaping the particular human rights discourse in Indonesia. (Maulidia & Sutarna, 2020).

NU, through the Bahtsul Masail Forum, has issued several fatwas related to human rights issues, including religious freedom, women's rights, and minority rights. These fatwas generally reflect an effort to accommodate universal human rights values while maintaining Sharia principles. Muhammadiyah, on the other hand, through the Majelis Tarjih, developed a "progressive ijtihad" approach that allows for the interpretation of religious texts within the framework of the public interest (*maslahat*), which is often in line with universal human rights values. Both organizations, which represent the majority of Indonesian Muslims, play a significant role in the "vernacularization" of human rights, namely the process of translating universal human rights concepts into local languages and practices that are better understood and accepted by the community.

The influence of local culture on the conception of particular human rights in Indonesia is seen in how customary values and traditions are integrated into human rights practices (Adat et al., 2023). Values such as deliberation, cooperation, and social harmony, rooted in various ethnic traditions in Indonesia, shape a unique perspective on human rights that tends to emphasize the communal dimension and the balance between rights and obligations. In Minangkabau society, for example, the concept of "*adat basandi syarak, syarak basandi Kitabullah*" (custom based on Sharia and Sharia based on the Book of Allah namely Quran) reflects the harmony between customary law, Islamic Sharia, and the state constitution in regulating individual rights and obligations. In Bali, the concept of "*tri hita karana*", which emphasizes the harmony of relationships between humans, God, fellow humans, and the environment, influences how environmental rights are integrated into local human rights practices.

Analysis of Constitutional Court decisions on human rights issues also shows the influence of local religious and cultural values in the constitutional interpretation of human rights in Indonesia. In Decision Number 140/PUU-VII/2009 concerning the judicial review of Law No. 1/PNPS/1965 on the Prevention of Abuse and/or Blasphemy of Religion, the Constitutional Court emphasized that religious freedom in Indonesia must be understood in the context of Article 29 of the 1945 Constitution on the state based on the One Almighty God. This decision reflects a particular approach to human rights that considers the religious characteristics of Indonesian society. Similarly, in Decision Number 46/PUU-VIII/2010 on the status of children born outside of marriage, the Constitutional Court provided a progressive interpretation that recognizes children's rights while still considering the sensitivity of religious values and customs related to marriage.

### **Strategy for Harmonizing Universal and Particular Human Rights in Indonesian State Regulation and Practice**

This study identifies several strategies employed by Indonesia in harmonizing universal human rights values with specific values in state regulations and practices.

The first strategy is the "national margin of appreciation," where Indonesia recognizes universal human rights standards but maintains a discretionary space in their implementation, tailored to the national context. This approach is reflected in Law No. 39 of 1999 concerning Human Rights, which adopts the principles of the Universal Declaration of Human Rights, but with several adjustments in accordance with the values of Pancasila. For example, Article 4 of the Law states that "the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted based on retroactive laws are human rights that cannot be reduced under any circumstances and by anyone." This formulation aligns with the concept of non-derogable rights in international human rights instruments, while its implementation also takes into account the Indonesian context (Ashri, 2023).

The second strategy is "cultural translation," in which universal human rights concepts are translated into a language and conceptual framework that is more understandable to Indonesians. This approach is seen in how human rights concepts are contextualized through the values of Pancasila. For example, religious freedom in the Indonesian context is understood within the framework of the first principle of Pancasila, "Belief in the One Supreme God," which emphasizes religiosity but with tolerance between religious communities. Similarly, economic and social rights are understood within the framework of the fifth principle, "Social Justice for All Indonesians," which emphasizes the principle of distributive justice. This approach enables Indonesians to understand and accept universal human rights principles within the framework of values familiar to them.

The third strategy is a "dialogical approach," in which Indonesia engages in constructive dialogue with the international community on universal human rights standards while voicing particular perspectives. This approach is evident in Indonesia's participation in the Universal Periodic Review (UPR) at the UN Human Rights Council, where Indonesia accepted most international human rights recommendations but also provided contextual explanations on sensitive issues such as the death penalty and LGBTQ+ rights. Through this dialogue, Indonesia aims to influence the evolution of international human rights norms to be more inclusive of non-Western perspectives, in line with Yasuaki Onuma's concept of a "transcivilizational approach" to international law. The fourth strategy is "mainstreaming human rights" in public policy through a rights-based approach. This approach is evident in the National Action Plan for Human Rights (RANHAM), which integrates universal human rights principles into the planning and implementation of development policies in various sectors.

RANHAM 2021-2025, for example, explicitly adopts the Sustainable Development Goals (SDGs) framework, which is aligned with international human rights standards, but with priority adjustments tailored to Indonesia's development context. This approach enables the internalization of universal human rights values in bureaucratic and public administration practices in a manner that is appropriate to Indonesia's socio-economic realities. The fifth strategy is "development of contextual human rights conflict resolution mechanisms", which shows the establishment and operationalization of human rights institutions such as Komnas HAM, Komnas Perempuan, and KPAI, which work by considering the balance between universal human rights standards and sensitivity to local contexts. Komnas HAM, for example, in handling cases of past gross human rights violations, developed a transitional justice approach that considered not only the aspect of punishing the perpetrators but also social reconciliation and restoring the dignity of victims in accordance with the communal values of Indonesian society. Likewise, Komnas Perempuan in handling issues of violence against women adopted an approach that was sensitive to cultural and religious contexts, while still upholding the universal principles of non-discrimination and gender equality (Catharina et al., 2024).

### **Theoretical and Practical Implications of the Dialectics of Universal and Particular Human Rights in Indonesia**

The analysis of the dialectic of universal and particular human rights in Indonesia has several critical theoretical implications. First, the Indonesian case demonstrates that the rigid dichotomy between universalism and relativism in human rights is no longer adequate for understanding the complexity of contemporary human rights practices. The Indonesian experience indicates that the universality and particularity of human rights do not need to be viewed as binary opposites; instead, they can operate on a spectrum where these two dimensions complement each other and interact dynamically. Indonesia developed what Boaventura de Sousa Santos calls a "diatopical hermeneutics," in which universal and particular human rights values engage in productive dialogue with each other, thus creating a richer and more contextual understanding of human rights. Second, the Indonesian experience reinforces the argument for the need for "multiple modernities" in human rights discourse, as proposed by Shmuel Eisenstadt. Indonesia demonstrates that legal modernization and the strengthening of human rights protection do not necessarily mean westernization, but can occur through pathways rooted in local traditions and values (Atqiya et al., 2024). Human rights in Indonesia have evolved not only through the adoption of international standards but also through the revitalization of progressive values within Islamic traditions and customs that have long been part of society. This challenge is the dominant narrative that views the development of human rights as a linear process, progressing from traditionalism to Western modernity.

Third, the case of Indonesia shows the importance of "vernacularization" in the effectiveness of human rights implementation. As argued by Sally Engle Merry, for universal human rights norms to be effective at the local level, they must be translated into conceptual frameworks and languages that are understood by local communities. In Indonesia, this process is facilitated by "cultural translators," including civil society organizations, scholars, and religious figures, who mediate between global human rights discourse and the local context. This vernacularization process is not merely a superficial adaptation but a substantive transformation that enriches the understanding of human rights with regional perspectives and experiences (Santoso, 2023).

In terms of practical implications, this study highlights several challenges and opportunities in the implementation of human rights in contemporary Indonesia. First, the challenge of synchronizing human rights regulations at various levels of government. Although the 1945 Constitution and Law No. 39 of 1999 adopt a comprehensive human rights framework, regional regulations and local policies still contradict universal human rights principles. This reflects the gap between the national commitment to universal human rights and particular interpretations at the local level. A more coherent approach is needed to harmonize human rights regulations across various levels of government without compromising regional autonomy and local wisdom. Second, the challenge of strengthening human rights culture in a pluralistic society. Indonesia needs to develop human rights education that is sensitive to the cultural and religious context of society, so that human rights principles are not perceived as foreign values or contradict local identities. Human rights education programs that integrate universal values with local wisdom can be an effective means of internalizing a culture of respect for human rights in the daily lives of Indonesian people. Third, the opportunity to strengthen Indonesia's role in global human rights diplomacy.

As the world's third-largest democracy and the country with the largest Muslim population, Indonesia is uniquely positioned to bridge the gap between Western and non-Western perspectives in the global human rights discourse. Indonesia can play a more active role in promoting an approach that recognizes the universality of human rights while respecting cultural and religious diversity, thereby contributing to the evolution of a more inclusive and pluralistic international human rights regime. Fourth, there is an opportunity to develop a "transformative human rights" model in Indonesia. This approach focuses not only on the protection of negative human rights (protection from state intervention) but also positive human rights that empower individuals and communities to actualize their potential. A transformative human rights model rooted in the values of Pancasila and Indonesian constitutionalism can serve as an alternative to the liberal human rights model that dominates the global discourse by paying greater attention to the economic, social, and cultural dimensions of human rights and striking a balance between individual and collective rights.

## **CONCLUSION**

This study demonstrates that Indonesia has developed a distinctive approach to harmonizing universal and particular human rights through what can be termed "contextual universalism." Indonesia's constitution and human rights regulations reflect a dialectical synthesis that acknowledges the universality of human rights while accommodating particularities rooted in religious values, culture, and socio-historical contexts. The tension between the universality and particularity of human rights in Indonesia is not a new phenomenon.

Still, it has been an inherent part of human rights discourse since the early days of independence, as evident in the debates of the 1957-1959 Constituent Assembly. Islam and local culture play

significant roles in shaping Indonesia's conception of particular human rights, with Muslim scholars and mainstream Islamic organizations contributing to the reconciliation of universal human rights principles with Islamic values and local wisdom. Indonesia has developed five main strategies for harmonizing universal and particular human rights: the margin of appreciation, cultural translation, a dialogical approach, mainstreaming human rights in public policy, and developing contextual mechanisms for resolving human rights conflicts.

Theoretically, Indonesia's experience challenges the rigid dichotomy of universalism versus relativism, strengthens the argument about multiple modernities in human rights discourse, and underscores the importance of vernacularization in the implementation of human rights. Practically, Indonesia faces the challenge of synchronizing human rights regulations across various levels of government and strengthening human rights culture in a pluralistic society, while also having the opportunity to enhance its role in global human rights diplomacy and develop a transformative human rights model rooted in the values of Pancasila and Indonesian constitutionalism.

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