

# Do Cities Really Want Human Rights?: A Socio-legal Inquiry of Governance Performance in Decentralized Indonesia

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**Abstract:** A modern city concept is aiming to create liveable city which addressing many favours. Liveable city does not mean exclusively as a beautiful, clean and IT based city. The city should be able to ensure access to essential public service such as access to education, access to health services, free against all forms of discrimination and intolerances, also protecting vulnerable people's rights. In order to drive the local governments to respect, protect and fulfill human rights, the central government of Indonesia through the Regulation of the Minister of Justice and Human Rights No. 34 of 2016 established a set of criteria of Human Rights Cities. This regulation then became the basis for the annual human rights cities award where by the end of 2017 there were hundreds cities received the award. Interestingly, some cities that widely reported dealt with serious human rights violation issues received an achievement as human rights cities. This paper intends to analyse using socio-legal perspectives the parameters use to examine achievement of local government implementing human rights using human rights based approach and consider supra factors besides norms which affects the effectiveness of the norms. What the research have found that many cities actually allowed political-economy oligarchs to exploit natural resources or build their business without considering community's rights protection. It seems that the local governments have been often hiding behind formal administrative law in order to provide a smooth way of the owners of capital and facilitate full of political economic interests of the authorities.

## 1 INTRODUCTION

Lately on 10<sup>th</sup> December 2017, The President of the Republic of Indonesia Joko Widodo conferred 232 awards for Provinces, Cities/Districts categorized as Human Rights Provinces/Cities including West Java, Bali and Bangka Belitung (Tribunnews, 2017). A year before, East Java and cities in the East Java Provinces gained the same award (Surya, 2016). In other words, there has been a long list of cities and provinces in Indonesia that should be read reflecting human rights principles in their local governmental practices.

The idea of human rights cities, the "city of human rights", is one of the initiatives developed globally, with the aim of localizing human rights. This idea is based on the recognition of the city as a key player in the promotion and protection of human rights and generally refers to a city whose governments and populations are morally and legally governed by human rights principles. The initiative departs from the idea that, in order for

international human rights norms and standards to be effective, all citizens must understand and understand human rights, as a framework for sustainable development within their communities. Principles for Human Rights Cities initiates set of rights to cities includes; non-discrimination and affirmative action; social inclusion and cultural diversity; participatory democracy and accountable government; social justice, solidarity and sustainability; leadership and political institutionalization; mainstreaming of human rights; effective coordination of institutions and policies; human rights education and training, and the right to compensation (Zainal Abidin, 2018).

According to the Article 28 I Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, it is stated that: The protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the Government. As part of the executive power that is distributed vertically, local government carries the same mandate of the constitution in Article 28 I

Paragraph (4) to take further the aim of human rights protection, promotion and fulfilment. Furthermore, the Law Number 23 Year 2014 concerning Local Government remarks that local government as the development spearhead is expected to realize at least two main ideas: *firstly*, local welfare which in turn will contribute to national welfare and *secondly*, the acceleration of democratization through public engagement in the policy-making.

In the local government where the actual interaction between government and society takes place in daily basis, human rights perspective is undeniably necessary due to the fact that the government decision directly affects society without due. Public services delivered by the local government ranging from waste management, local market, cemetery, education and health service, to the issue of natural resources. Even though in the context of Indonesian unitary system, local government is inferior to central government. The local government in fact exercises key power related to locality because vertical distribution of power in Indonesia believes that local knows better about their need and value. As a result, local government is in full authority to issue permits mostly for businesses on many subjects/area for instance mining permits, advertisement license etc. Similarly, the authority to enact local regulation based on locality is used to express majority group.

Under those circumstances, it is obvious that local problems do not go far from those two. National Commission on Violation Against Women noted there were hundreds and counting local regulations contain discriminative rules against women and minority groups (Komnas Perempuan, 2010). There is a tendency to express majority values into the regulation.

Moreover, the Human Rights Cities award is not free from criticism. Again National Commission on Violence Against Women for example, gave the spotlight on the award given to the Governor of Central Java as an unworthy award (Komnas Perempuan, 2017). The commission argues that what happened in Central Java with the destruction and severe nature damage caused by limestone mining that occurred in Kendeng, and the cracking of social cohesion and even familial relationship due to differences in pro and contra cement alignment should be counted as a failure to realize the promotion of human rights in Central Java. It is an irony where in an area that clearly has human rights issues factually granted with the human rights award.

This article departs from that social-political context, which using case studies for exploring the fundamental problems of 'human rights cities' award and its debates. For deepening facts and its analysis, this paper uses a socio-legal approach to dissecting such problems.

## 2 THE ABSENT OF HUMAN RIGHTS BASED APPROACH

Human Rights-Based Approach (HRBA) is a human development process framework which based on international human rights standards for the purpose to promote and to protect human rights. It is argued that HRBA has three characteristics, namely: its objective is human rights' fulfilment; it strengthens the capacity of right-holders to claim their entitlements and of duty-bearers to meet their obligations; and principles and standards from international human rights treaties should be a guide to all development programs.

As a conceptual framework, HRBA must be applied to all development's plans, policies, process and outcomes. It is expected that the application of HRBA can fulfil two rationales, stating that a HRBA is legally and morally right (intrinsic rationale) and admitting a HRBA leads to improved and more sustainable human development outcomes (instrumental rationale) (The United Nations High Commissioner of Human Rights, 2006).

HRBA begins in 1997 when the United Nations (UN) launched the United Nations Programme for Reform which also urged all entities within the UN system to integrate human rights mainstreaming into various activities and programs. Since then, HRBA became a paradigm in the development cooperation program. In its development each agency in the UN gets their respective experience in the implementation of HRBA. Hence, the UN constructed the Statement of Common Understanding. This Statement consists of three aspects: (1) all programs of development cooperation should realize human rights as stated in the Universal Declaration of Human Rights and other international human rights instruments, (2) all principles and standards in the Universal Declaration of Human Rights and other international human rights instruments should guide all development programs in all sectors and in all phases, (3) development cooperation develops the capacities of the duty-bearers fulfil the obligations and the rights-

holders entitle the rights (The United Nation High Commissioner of Human Rights, 2006).

In the context of Human Rights Cities Award in Indonesia, the assessment of the awardee must complies principles and standards from at least two main ratified international human rights treaties, the ICCPR and the ICESCR. However, it is presumed that a HRBA as a paradigm is not applied in the assessment of the human rights cities awarding.

## 2.1 The Government Self Proclaim

13 of 18 articles in the Ministry Instrument Number 34 Year 2016 concerning Human Rights Cities Criteria regulates the procedure of assessment followed with appendix consist off set of questions and forms. The assessment process begins with a submission by the municipal government by completing forms provided, accompanying with supporting data. The proposed document must be validated by the respective head of department, government secretariat in the municipal and provincial level. The entire document is then submitted to the head of the regional representative office of the Department of Law and Human Rights. At the next step, the head of the regional office shall examine the documents covering: arithmetic correction; the validity of the supporting documents; relevance between data assessment form with the supporting documents.

In case of incompleteness or non-conformity, the head office shall coordinate with the validator. Whereas if the examination of documents is declared complete then the head of the regional office send the document to the Directorate General of Human Rights of the Department of Law and Human Rights. In the next process, the Directorate General then set up an assessment team consisting of ministry officials, non-governmental organizations and academics. If at this stage there is a discrepancy between the supporting data and the contents in the form, once again the assessment team can coordinate with the validator. Furthermore, if all documents are in accordance with the results of the assessment, it is then shall be reported to the General Director to be subsequently reported to the Minister. The whole process since the examination until reported to the minister takes about 2 months starting on 15 September to 10 November every year.

It can be seen from this process, the city government to be assessed apply for their own without any participative mechanism from the grass root. In addition, the whole sequence is mostly

document-based assessment and reflects a more coordinative rather than evaluative mechanism.

## 2.2 Quantitative Question to Answer

According to Article 3 of the ministry instrument, assessment of the fulfillment of human rights criteria is measured within three sections: structure, process and outcome. At the structural section, it is questioned whether or not local government has initiated policy through local regulation on each matters and how much percentage of funds are allocated for the activity in the regional budgetary program. Assessment of the process section is carried out on the availability of facilities, infrastructure and human resources. Similarly, an assessment of outcome section is also measured through figures.

On the measurement of the right to education, for example, it is asked about the ratio of availability of primary schools and the ratio of teacher availability. Then the outcomes are measured by participation at schools rates and literacy figures. Furthermore, on the measurement of the rights of women and children for example, it is asked about the existence of counseling and rehabilitation program for women and children victims of violence with the result indicator is the ratio of domestic violence and the percentage of underage workers

This assessment tool of course is obvious, but it certainly cannot reveal what kind of effort has been taken to ensure, for instance, the affirmative action has been taken to ensure the poor go to school? The use of quantitative-based assessments is actually vulnerable to manipulation although it is indeed easier to follow. While the qualitative assessment does require mechanism that is not simple. However, in the context of measuring the fulfillment of human rights, both aspects of the assessment should be pursued to capture the actual conditions in the cities. Both quantitative and qualitative indicators should be set to monitor the achievement of human rights through development programs (The United Nation High Commissioner of Human Rights, 2006).

## 3 MERE POLITICAL TRANSACTION

Cases of mine exploitation, land grabbing and expansion of oil palm plantations indicate the working of that power. The law, especially the administrative law and the judicial mechanism of

TUN, legitimizes it effectively is used to benefit the power of the oligarchy. The case of Kendeng (against cement mining industry), Kulon Progo case (for international air port project infrastructure), Tumpang Pitu case (Banyuwangi gold mine), are series of case illustrations. The law, in the end, is merely devoted to the economic power of large capital politics, and directly removes eco-social justice.

From these cases, actually the City of Human Rights Care is rather either administrative or procedural model of human rights programs, instead of the progressive realization of human rights in the city. The question of implementation has been always a big gap with human rights standard under international human rights normative framework.

Similar observation has been stated by a Jakarta based non-governmental organization, ELSAM (the Institute for the Study and Advocacy of the Society). The Deputy Director of the Institute for the Study and Advocacy of the Society, Wahyudi Djafar, said there are 227 districts in Indonesia who received the predicate on the City of Human Rights Care at the end of 2016. This was issued by the government and announced by Minister Yasonna Laoly in the year then in Surabaya, East Java, when commemorating World Human Rights Day.

According their research, especially based on six areas to study, such as Padang, Surakarta, Kayong Utara, Gorontalo, East Manggarai, and Jayapura, ELSAM measures the performance of structural aspects, processes, and results of human rights concerns, which show different data. "There are areas that diligently make human rights regulations but low on implementation results," said Wahyudi (Tempo, 2017).

ELSAM observed that East Manggarai was included as human rights, the result is 33.3 percent of the three aspects of the study, but the results were low. Surakarta region actually gets a high rating, but the most serious problem with such city is related to religious intolerance.

## 4 CONCLUSIONS

We argued that ceremonials of the City of Human Rights Care has actually reflected a mere political transaction rather than a serious commitment to improve human rights condition at field. Such political transaction has been also showing the work of oligarchic forces underpinned by state law policy with the subjection of campus intellectuals who became lubricants, gave birth to the destruction of

natural resources by corporations and the exclusion of indigenous communities and peasants widely.

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