

Centering Acculturation as an Approach to Challenging the Fragility of Human Rights in Indonesia

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Abstract

The degree of fulfillment of human rights differs from one situation to another, from one country to another. Although a country's constitution sets out the framework for protecting human rights, attacks on human rights at a practical level are visible. We can see that human rights are increasingly fragile. Specifically, Indonesia is experiencing a various kinds of human rights problems. For example, some minority groups such as the Ahmadiyya minority Group and Christians, routinely face discrimination and restrictions on human rights. This article discusses the concept of acculturation as an approach to challenging the fragility of human rights in Indonesia specifically and, more broadly, around the world. The author uses a critical analysis of previous academic studies to explore and elaborate on this discourse.

Keywords: *Acculturation, Human Rights, Minorities, State, UDHR, Indonesia*

I. INTRODUCTION

Discourses on human rights are controversial in contemporary Indonesia.¹ Such discourses exist in three main areas. First, academia – including universities and research institutes – which place human rights at the center of their scholarly attention. Second, the State (politics) which provides constitutional and political instruments to facilitate the fulfillment of the fundamental human rights of citizens. Third, society is interested in mobilizing collective movements to strengthen the foundation for protecting human rights. These three areas above agree on two major tenets of the discourse on human rights in Indonesia. First, Indonesia has made progress in strengthening the foundations

¹ Katharine McGregor, “Exposing Impunity: Memory and Human Rights Activism in Indonesia and Argentina” (2017) 19:4 J Genocide Res; Katharine McGregor & Ken Setiawan, “Shifting from International to ‘Indonesian’ Justice Measures: Two Decades of Addressing Past Human Rights Violations” (2019) 49:5 J Contemp Asia.

for protecting human rights. More than two decades ago, international and national criticism of President Suharto's regime prompted great steps in strengthening human rights protections in the country. The establishment of (the) National Human Rights Commission (Komisi Nasional Hak Asasi Manusia Indonesia) is a key example of the progressive political acts made in Indonesia.² Second, human rights, as one of the core principles of the Republic of Indonesia's constitution, is a fragile concept. In practice, the protection human rights is rarely more than a superficial nod to the constitution. The fulfillment of human rights has always been a critical issue in Indonesia;³ numerous minority groups, such as religious minorities, face barriers to the enjoyment of fundamental rights and freedoms as set out in the constitution.⁴

National and international human rights bodies have suggested various ways to strengthen the foundation of human rights in Indonesia. This would fundamentally require a systematic and continuous strategy to enhance the realisation of human rights. However, there is no single strategy capable of accomplishing such a grand and complex task. Indonesia should find constructive inspirations at the global level concerning a discourse on strengthening human rights.⁵ This article explicitly discusses the concept of acculturation within the framework of countering the fragility of human rights in Indonesia.⁶ It reflects on the experiences of (religious) minorities as vulnerable citizens and how this has impacted their access to human rights protections considering the social and political difficulties they face. Methodologically, this article analyzes primary and secondary sources from academic studies and other reports, offering the concept of acculturation as an intellectual and political approach to challenging the fragility of human rights in Indonesia and worldwide.

This article is divided into six (6) sections. After this brief introduction it presents the principle of human rights. The third part explains the fragility of human rights in Indonesia, referring to the difficulties experienced by several minority groups, mainly religious minority groups, in enjoying the fulfillment of their fundamental rights and freedoms. Fourth, it discusses the importance of the approach in strengthening human rights. In the fifth section, the author explicitly discusses the concept of acculturation as an approach to challenging the fragility of human rights. Finally, it concludes by summarising the main argument and providing concluding remarks.

2 Catherine Renshaw & Kieren Fitzpatrick, "National human rights institutions in the Asia Pacific Region: Change agents under conditions of uncertainty" in *Hum Rights, State Compliance, Soc Chang Assess Natl Hum Rights Institutions* (2011).

3 Al Khanif, "The Challenge to Implement Religious Freedom for Minority in Indonesia As A Multicultural State" (2010) 1 J Indones Focus.

4 Ahmad Najib Burhani, "Hating the Ahmadiyya: The place of 'heretics' in contemporary Indonesian Muslim society" (2014) 8:2 Contemp Islam.

5 Khalid Khalid, Hari Purwadi & Hartiwingsih, *Integration of Human Rights Institutions for Strengthening the Independence and Effectiveness of Human Rights Protections in Indonesia* (Universitas Indonesia, Depok, 2018).

6 Edward Aspinall & Eve Warburton, *Indonesia: The Dangers of Democratic Regression* (2018).

II. REIMAGINING THE POWER OF HUMAN RIGHTS

The 1948 Universal Declaration of Human Rights (UDHR) is a sacred document for researchers, human rights activists, and NGOs worldwide.⁷ The preamble of the UDHR sets the tone and purpose for human rights discourses in the statement: “[R]ecognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world” (United Nations, 2008). Article 2 elaborates: “Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status.” (United Nations, 2008). Throughout its 30 Articles, the UDHR defines its purpose as a powerful tool enshrining that *every human, without exception, is entitled to the fundamental rights and freedoms as set out in the body of the declaration*. As such, the universal nature of human rights is not negotiable for States parties.

Signed in the wake of the Second World War, one of the darkest times in modern history, characterised by the horrors of the Holocaust, the UDHR attempts to prevent such a devastating and large-scale ‘massacre’ occurring again.⁸ Through this Declaration, the humanity of all people is to be recognized by all countries.⁹ The wide-reaching influence of the UDHR is demonstrated by the number of countries who signed and ratified it (United Nations, 2008). On December 10, 1948, the UDHR was formulated, adopted, and signed by the 58 members of the United Nations. The UDHR encourages a global revolution on how governments should treat their citizens. The UDHR is fundamentally based on the claim that all rights are interdependent and indivisible.

Sixty years on, the document has been ratified and incorporated into the national constitution of more than 185 nations worldwide. The insightful and powerful influence of the UDHR is substantial, as stated by Shiman, “*Although the UDHR is not a legally binding document, it is (see also Green, 2018)¹⁰ still achieving the status of customary international law because the global community regards it as a common standard of rights achievement for all people*” (1993, p.7).¹¹ The UDHR became the primary United Nations document for establishing human rights norms. Based on this argumentation, the State has a duty ‘to promote, respect, and fulfill’ the human rights of their every

7 Emilie M Hafner-Burton, Kiyoteru Tsutsui & John W Meyer, “International human rights law and the politics of legitimation: Repressive states and human rights treaties” (2008) 23:1 Int Sociol.

8 Jost Düllfer, “Roland Burke, Decolonization and the Evolution of International Human Rights. (Pennsylvania Studies in Human Rights.) Philadelphia, University of Pennsylvania Press 2010 Burke Roland Decolonization and the Evolution of International Human Rights. (Pennsylvania Studies in Human Rights.) 2010 University of Pennsylvania Press Philadelphia \$ 55,-” (2013) 296:2 Hist Z.

9 David Newman, Frank & Weissbrodt, *International Human Rights: Law, Policy, and Process* (Massachusetts: Lexis-Nexis, 2009).

10 Chandler Green, “70 YEARS OF IMPACT: INSIGHTS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS”, (2008), online: *United Nations Found* <<https://unfoundation.org/blog/post/70-years-of-impact-insights-on-the-universal-declaration-of-human-rights/>>.

11 *Teaching Human Rights*, by David Shiman (Denver, 1993).

citizen. It is intended to seek justice for vulnerable minorities and prevent abuse of power from government actors and social groups.

These three elements of State obligation must be connected to achieve comprehensive protection for minorities. The State needs to recognize and respect religious minorities. The State should establish protection for religious minority groups (United Nations, 2008). The UDHR contains five important articles which serve as the basis for the protection of religious minorities: (1). *article 1 states free and equal in dignity and rights*; (2). *article 7 mentions equality before the law*; (3). *article 18 mentions freedom of thought, conscience, and religion*; (4). *article 19 mentions freedom of opinion and expression*; (5). *article 20 mentions freedom of assembly and association*. In this perspective, religious minorities have a constitutive character.

Decades after the establishment of the UDHR, the manifestation of the document is affected by the heterogeneous composition of the international community and the power relations.¹² This also refers to the existence of the International Bill of Human Rights¹³ (United Nations—OHCHR, 2008). It combines three main parts of international human rights: the 1948 UDHR, the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹⁴

The UDHR, a few years later, was reinforced into two kinds of International Covenant declarations: *The International Covenant of Civil and Political Rights (ICCPR) and the International Charter on Economic, Social and Cultural Rights (ICESCR) in 1976* (OHCHR, 2013). First, the ICCPR refers to a series of rights which relate to the freedom of every person to engage in political processes; it was adopted in 1966 and entered into force in 1976. Everyone has an equal right to demonstrate political interests and individual beliefs. Civil and political rights, in general, are related to the personal relationship with the nation-state. Therefore, civil and political rights are also connected to how the state constructs the fulfillment system and the protection of people. To this point, *people should be free from all forms of violation, repression, and oppression*.¹⁵

Second, the ICESCR was also adopted in 1966 and entered into force in 1976. The ICESCR declares that all people have a broad range of economic, social, and cultural rights. These rights are associated with the condition that people receive development results, such as welfare, prosperity, and the opportunity for jobs. Human rights are also related to cultural beliefs. Every person has the right and freedom to determine their

12 John Baylis & Steve Smith, “The Globalization of World Politics: An introduction to international relations” (2001) *Glob World Polit An Introd to Int Relations*.

13 *Fact Sheet No.2 (Rev.1), the International Bill of Human Rights*, by United Nations-Office for High Commissioner for Human Rights (Geneva, 2008).

14 Rhona K M Smith, “4. The International Bill of Human Rights” in *Textb Int Hum Rights* (2016).

15 Sarah Joseph, “Extending the right to life under the international covenant on civil and political rights: General comment 36” (2019) 19:2 *Hum Rights Law Rev*.

faith, such as religion and ideology. The status of minorities, including religious minority groups, closely relates to ICESCR on this basis.¹⁶

The purpose of these declarations is to expand and deepen the notion of *human rights* as set out in the UDHR. These two International Covenants (IC) demand protection mechanisms for individuals and social groups to organize their political and socio-religious status and the expression of beliefs. The ICESCR, in part I article 1, proclaims that *self-determination* is a fundamental right of every person. The rights relate to people's freedom to engage in the political process and to enjoy access to the fulfilment of human rights without discrimination.¹⁷

These IC's have been supported and contextualised by additional conventions which vary in content from focus to region. To United Nations has ratified numerous treaties and statutes to uphold the principles established in the UDHR. For example, the San Francisco Conference adopted the International Court of Justice's Statute on June 27, 1945. This Statute was an integral part of the UN Charter following article 92 and excerpts of 70 articles. From this, the UN established The International Court of Justice as its principal organ.¹⁸

The Vienna Convention on the Law of Treaties was adopted on May 22, 1969 by the United Nations Conference. The States Parties that have ratified this convention believe that the codification and progressive development of the UN's purpose outlined in the Charter, namely, the maintenance of international peace and security, the development of relations, and the achievement of cooperation among nations. These States also affirmed that disputes concerning treaties, like other international disputes, should be settled peacefully and in conformity with justice and international law (United Nations, 2005).

The UN also formed the International Criminal Court (ICC) under the Roma Statute. This Statute was adopted on July 17, 1998 by 120 countries of the United Nations Conference. As stated in the preamble of the Statute, the ICC should shall be complementary to national criminal jurisdictions, resolved to guarantee lasting respect for and the enforcement of international justice.¹⁹ The Roma Statute firmly opposes

16 Amar Dhall, "On the philosophy and legal theory of human rights in light of quantum holism" (2010) 66:1 World Futur J Gen Evol.

17 Magdalena Sepúlveda Carmona, Magdalena, "Ensuring inclusion and combatting discrimination in social protection programmes: The role of human rights standards" (2017) 70:4 Int Soc Secur Rev. Carmona, "Ensuring inclusion and combatting discrimination in social protection programmes: The role of human rights standards" (2017) 70:4 Int Soc Secur Rev.

18 James Crawford & Amelia Keene, "Interpretation of the human rights treaties by the International Court of Justice" (2020) 24:7 Int J Hum Rights.

19 *Roma Statute of the International Criminal Court (ICC)*, 2011.

massive violence against vulnerable members of society, such as children and women. This Statute is fundamentally concerned with facilitating peace.²⁰

Specifically concerning minority situations, on December 18, 1992, the United Nations Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities which was formally declared in resolution 47/135 in New York. The resolution explicitly emphasizes the support and realization of the fundamental rights of everyone belonging to national or ethnic, religious, and linguistic minorities.²¹ The principal points of this resolution are integral part of any comprehensive development policy, particularly within the framework of democracy based on the rule of law. Ultimately, this strategy should contribute to the achievement of cooperation among nations.

This article will return to the idea that human rights protections at the national level should also be based on international human rights policy and legislation. In response to the massive destruction of human dignity during the world wars, mainly the Second World War, the global community enshrined human rights principles and standards to facilitate protection worldwide. This global concern started with the proclamation of the UDHR. One of the critical principles of the UDHR is that *every person is entitled to the same freedom before the law*. Ignatieff (2000) stated that human rights are *idolatry*, based on their promise to protect human beings.²² From this perspective, human rights provide a fundamental base for the formulation of recognition for individuals and social groups in particular and parochial settings.²³

III. REFLECTING ON THE FRAGILITY OF HUMAN RIGHTS IN INDONESIA

The critical debate about the UDHR position arose from the geopolitical turmoil at the end of the 1980s and early 1990s. Human rights violations remain a critical international issue, representing an acute attack against humanity in many parts of the world. In this context, the effectiveness of the UDHR is uneven.²⁴ This critique prompted questions

20 Noam Schimmel, "The Moral Case for Restorative Justice as a Corollary of the Responsibility to Protect: A Rwandan Case Study of the Insufficiency of Impact of Retributive Justice on the Rights and Well-Being of Genocide Survivors" (2012) 11:2 J Hum Rights.

21 *The Protection of Linguistic Minorities in Italy: A Clean Break with the Past*, by S Van Der Jeught (2016).

22 Michael Ignatieff, "I. Human Rights as Politics II. Human Rights as Idolatry" (2000) Tann Lect Hum Values, Deliv Princet Univ.

23 Henry J Steiner, Philip Alston & Ryan Goodman, *International human rights in context: law, politics, morals: text and materials* (2008).

24 Elizabeth Donovan, Donald & Andersen, "Toward the Effectiveness of International Human Rights Law" (2013) December 1 Am Soc Int Law (ASIL Forum), online: <<http://www.asil.org/node/697/>>.

which linked the document to the hidden agenda of liberal democracy with its victory over communism.²⁵

Referring to cases where the rights of religious minorities have been violated such as the Ahmadiyya and several Christian communities, this article serves as a reminder of the existing fragility of human rights protection in Indonesia's domestic setting. This situation is primarily related to the weakness of constitutional recognition and protection formulas for religious minorities.²⁶ On the one hand, for example, the 1945 Indonesian Constitution explicitly acknowledges the fundamental rights of every citizen regardless of religion, race, political affiliation, or ethnicity. Still, some domestic and regional laws and policies provide justification for the existence of religious minority groups to be neglected and, consequently, their rights overlooked.²⁷

This article introduces three primary explanations of the fragility of human rights in Indonesia. The first refers to the gap between international human rights norms which codify every person's fundamental rights without clear direction on how they should be implemented at the practical level. In Indonesia, a valuable human rights framework has yet to be established.²⁸ The normative foundation of international human rights does not provide a clear protective operational framework. Although international human rights, in general, are founded on common principles – such as social inclusion, participation and inclusion of minorities, and democratic government—protection mechanisms have not been fully integrated at the domestic or local levels.

This article highlights a critical and complex problem of connectedness and interrelation between the normative framework of international human rights on the one hand, and the translation and application of these principles at the domestic level on the other hand.²⁹ A normative human rights framework is not equipped to address concrete human rights problems in domestic cases, both on national and sub-national (local) levels. Equality and non-discrimination principles, for example, merely becomes part of an ineffective framework of protection at a lower level. This situation refers closely to the presence of Article 156 the Criminal Code which prohibits the public expression of "hostility, hatred or contempt" against a group(s) in society. The term "group" here relates to the religious category (i.e. religious groups). Article 156 was created to control

25 Jerome J Shestack, "Human Rights in Crisis: The International System for Protecting Human Rights during States of Emergency. By Joan Fitzpatrick. University of Pennsylvania Press, 1994. Pp. viii, 250. Index. \$41.95." (1996) 90:1 Am J Int Law.

26 David Kloos, "In the Name of Syariah?: Vigilante Violence, Territoriality, and Moral Authority in Aceh, Indonesia" (2014) 98:1 Indonesia.

27 Ryan Goodman & Derek Jinks, *How to influence states: Socialization and international human rights law* (2004).

28 Jack Goldsmith & Eric A Posner, "The New International Law Scholarship" (2006) Chicago Public Law Leg Theory Work Pap No 126.

29 David Kennedy, "The international human rights movement: Part of the problem?" in *Hum Rights* (2017).

religiously targeted hate speech in public spaces.³⁰ Moreover, article 156a in particular prohibits the expression of feelings or actions including article 1 which states that by nature, it is hostile to abusing or defaming a religion adhered to in Indonesia, and article 2 "with the intention that people do not practice any religion based on the One Godhead."³¹ This article has long reflected the gap between the international normative principles of human rights and the condition of fulfilling the rights of religious minority groups in Indonesia. In other words, this article may limit the fulfillment of religious minorities' rights.³²

Implementing normative principles of international human rights through a constitutionalized process at the domestic level cannot guarantee the protection of human rights in a particular situation. Indonesia continues to lack normative empowerment to challenge the emerging trend of the sectarian and partial regulatory framework. In fact, in the context of religious minorities, the Indonesian state has precisely formulated legal decisions based on a particularistic religious statement, judgment, and decree.³³

The State's position in guaranteeing the fulfillment of human rights is the second source of human rights fragility in Indonesia. Despite the State's political responsibility to fulfill the fundamental rights of its citizens, the political nature of human rights fragility is more severe at the national level. This portrait is primarily applicable to government policies in democratic changes and democratic government. Although Indonesia has achieved significant political progress after the fall of Suharto in 1998, less than one decade after this reformation session the country's politics and democracy have shifted toward different political conditions.³⁴ This is also reflective of a paradoxical model of Indonesian democracy, departing from Freedom House's annual report which summarizes Indonesia's achievement of positive progress based on several measurable variables such as civil liberties, freedom of the press, clean governance, and religious freedom.

As discussed above, the current political context of minority groups is intimately affected by the position of the Indonesian government, reflecting international human rights concerns and confirming the role of the state and government in guaranteeing and

30 This information can be seen in the Coalition of Civil Society for the Freedom of Religion or Belief In Indonesia, Joint Submission Universal Periodic Review on The Condition of Freedom Of Religion or Belief Of The 41st UPR WORKING GROUP SESSION: INDONESIA, Submitted To UNITED NATIONS HUMAN RIGHTS COUNCIL 41st Session of the Working Group on the Universal Periodic Review November 2022, Accessed on October 10, 2022. Link. <https://pbhi.or.id/wp-content/uploads/2022/04/FINAL-DRAFT-Indonesia-Joint-Submission-UPR-on-FoRB-2022.pdf>

31 Ibid.

32 Ibid.

33 Mohamed S M Eltayeb, "A Human Rights Framework for Defining and Understanding Intra-Religious Persecution in Muslim Countries" in *Chall Relig Discrim Daw New Millenn* (2004).

34 Philip J Eldridge, *Politics of human rights in southeast Asia* (2013).

fulfilling the fundamental rights of every individual. The UDHR defines the State's position as a formal institution that acts as a political guarantor of human rights that could be established through the political and legal process.³⁵ This definition describes the State's political obligation to respect, promote, and protect the human rights of every citizen. The state executes this fundamental role through its institutions and actors, directly relating to society. However, there is not yet an effective mechanism of human rights protection that can effectively implement these international ideals at the domestic level. The responsibility of the State as one of the primary protectors of human rights is not yet a public feature of Indonesia's discourse on human rights.³⁶

The role of the government, at both national and local levels, in violating the rights of religious minorities is facilitated by a number of regulations and decrees.³⁷ For example, the violation of the Ahmadiyya minority was caused by the Joint Decree of the Minister of Religion, the Attorney General, and the Minister of Home Affairs of the Republic of Indonesia No. 3 of 2008, KEP-033/A/JA/6/2008, and No. 199 of 2008.³⁸ This decree concerns warnings and orders to adherents and/or members of the Management of the Indonesian Ahmadiyya Congregation (JAI) and Community Members. It was better known as "SKB Tiga Menteri".³⁹ Furthermore, some of the districts and provincial regulations that justify the violation of religious minorities in Indonesia at the provincial levels include the Aceh Governor signing Regulation Number 25 of 2007 on the construction of houses of worship⁴⁰, the East Java Governor Regulation (Peraturan gubernur) No. 55 of 2012 concerning the Guidance of Religious Activities and Supervision of Heresies in East Java, the West Java Governor Regulation (Pergub) No. 12 of 2011 concerning the Prohibition of Activities of the Indonesian Ahmadiyya Congregation in West Java; and the Circular Letter Number: 300/ 1321-Kesbangpol

35 Laura Valentini, "Human rights, freedom, and political authority" (2012) 40:5 *Polit Theory*.

36 Rizal Sukma, "Do New Democracies Support Democracy? Indonesia Finds a New Voice" (2011) 22:4 *J Democr.*

37 Hurriyah. "Dynamics of Shrinking Religious Freedom in Post-Reformasi Indonesia." *JSEHR* 4 (2020): 335.

38 Human Rights Watch (HRW), "In Religion's Name Abuses against Religious Minorities in Indonesia", 2013. Link. https://www.hrw.org/sites/default/files/reports/indonesia0213_ForUpload_0.pdf

39 Sitti Sani Nurhayati, "Contested identities: Tuan Guru and Ahmadiyah in the redrawing of post-1998 Sasak-Muslim boundary lines in Lombok." *Thesis* (2020), Victoria University of Wellington, https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/8896/thesis_access.pdf?sequence=1

40 Melissa Crouch, "Implementing the regulation on places of worship in Indonesia: New problems, local politics and court action." *Asian Studies Review* 34, no. 4 (2010): 403-419.

concerning the ban on the celebration of Ashura (religious holiday of the Shia Congregation) in the city of Bogor.⁴¹

The third aspect of human rights fragility is concerned with the social context in Indonesia. A sociological understanding of human rights can help explain patterns of discriminatory relationships which can manifest into various religious propaganda over other religious groups. This has primarily been expressed through the continued violence and attacks against members of religious minorities mainly by other religious groups. This trend is borne from majority religious domination and constitutes one of the most severe threats at the societal level. Further, it reflects the central logic behind the narrative of violence against the Ahmadiyya group and other religious minorities in Indonesia.

Majority domination operates at the social and political level, monopolizing legal processes that determine the status of religious minorities. Accordingly, the dominant form of social relationship between religious groups tends to challenge the relationship between religious groups. Moreover, the dominative power of the majority does not only *'intersect'* with a social group but also deals primarily with 'public opinion'. The presence of a 'dominative majority' endangers human rights protections for religious minorities.⁴² This is demonstrated by the formulation of the Indonesian Ulama Council's decree. In July 2005, the Indonesian Ulama Council reissued an edict, originally issued in 1980, stating that the Ahmadiyah community deviates from Quranic teaching by claiming that Mirza Ghulam Ahmad was a "prophet."⁴³ Following the 2005 decree, Islamist groups mobilized and assaulted the Ahmadiyah theology institute in Parung, Bogor regency, West Java, as well as Ahmadiyah communities in East Lombok (Lombok island, West Nusa Tenggara province) and West Java province, including in Manis Lor, Tasikmalaya, Garut, Ciaruteun, and Sadasari.⁴⁴ Other religious minorities have also been targeted, for example, in October 2015 protestors in Aceh Singkil District in the province of Aceh demanded the local government close 10 churches without permits.⁴⁵ The latest case relates to the mass demonstration of the construction of the Maranatha Batak Protestant Huria Christian Church (HKBP) in the Cikuasa neighborhood, Geram Village, Grogol

41 IMPARSIAL (The Indonesia Human Rights Monitor), "Civil Society Report on the Condition of Freedom of Religion in Indonesia for the 2017-2021 Period on Indonesia's Universal Periodic Review (UPR) of 2022", 14 April 2022, Link. <https://imparsial.org/en/laporan-masyarakat-sipil-tentang-kondisi-kebebasan-beragama-berkeyakinan-diindonesia-periode-2017-2021-dalam-universal-periodic-review-upr-indonesia-2022/> Accessed on October 10, 2022.

42 John Gillespie, *Human Rights as a Larger Loyalty: The Evolution of Religious Freedom in Vietnam* (2014).

43 The Wahid Institute, "*Religious Authority versus State Authority*", Monthly Report on Religious Issues, Edition VI, January 2008, Link. http://www.wahidinstitute.org/files/_docs/06.MonthlyRepost-VI-english.pdf/ Accessed on October 13, 2022.

44 Refugee Review Tribunal, Australia, "*RRT RESEARCH RESPONSE: Ahmadiyya*", 5 February 2007, Link. <https://www.refworld.org/pdfid/4b6fe1edd.pdf>

45 BBC News, "Churches attacked and one man killed in clashes in Aceh, Indonesia", 14 October 2015, Link. <https://www.bbc.com/news/world-asia-34524817> Accessed on October 10, 2022.

District, Cilegon City, Banten Province. This mass protest was justified by reference to the Decree of the Head of Serang II No. 189/Huk/SK/1975, dated 20 March 1975.⁴⁶

The anti-minority movement describes a clash within society and reflects on the fragility of human rights in Indonesia. The situation has been built for the power accumulation and maintenance of mainstream and radical groups. They can control the political processes in the political arena. The perpetrators such as the protester, Islamic Defenders Front, and other radical groups, have utilised violence to maintain power and control over religious minorities. Moreover, the clash within Indonesian Islam society has a critical impact on the presence of the Ahmadiyya and other minority groups in Indonesia. Differences in religious beliefs can trigger discrimination, violence, and threats against religious minorities.⁴⁷ This has led to a new human rights crisis by undermining the fundamental rights of religious minorities. It is also one of the leading causes of social resentment within local communities. Accordingly, the democratic transition has been marked by massive violence and discrimination against religious minorities in recent years.

IV. EXPLAINING THE NEED FOR A HUMAN RIGHTS APPROACH

The weakness of human-rights protection is caused by the inability of international human rights and national constitutions to accommodate for myriad domestic contexts and problems. This limitation in process is critical in the Indonesian context where both national and local levels have been affected by the atmosphere of new state formation in the post-colonial and post-authoritarian phases. Political change at national level implies that universal human rights should become the leading solution to increasing violence against humanity. Thus, this political change challenge the legitimacy of international human rights as a form of human rights protection.⁴⁸

The States' s problem will become one of the main factors involved in the emergence of new forms of human rights violation. While the development of international human rights law (IHRL) is still limited, the weakness of human rights governance on the domestic stage has led to a new crisis.⁴⁹ This crisis is characterized by the rapid growth of various forms of violation against human dignity worldwide such as

46 Human Rights Monitor, "The Mayor and Deputy Mayor of Cilegon publicly reject the establishment of a Christian Church in Cilegon City, Banten Province", *Human Rights News*, 5 October 2022. Link. <https://humanrightsmonitor.org/case/the-mayor-and-deputy-mayor-of-cilegon-publicly-support-the-rejection-of-the-establishment-of-a-christian-church-in-cilegon-city-banten-province/>

47 Ahmad Najib Burhani, "Fundamentalism and religious dissent: the LPPI's mission to eradicate the Ahmadiyya in Indonesia" (2016) *Indonesia Malay World*.

48 Marie Bénédicte Dembour, "What are human rights? Four schools of thought" (2010) *Hum Rights Q*.

49 Ann Marie Clark & Kathryn Sikkink, "Information effects and human rights data: Is the good news about increased human rights information bad news for human rights measures?" (2013) *Hum Rights Q*.

the violation of minority rights. In the context of political change, clashes at the national level can emerge when international human rights claims and beliefs are perceived to be lost.⁵⁰

This section attempts to reflect on the human-rights approach to challenge the problem of protecting human rights, including religious minorities and other minority groups in Indonesia and worldwide.⁵¹ The political history and conceptualisation of human rights points a strong vision for promoting human dignity. The human-rights movement has made significant progress since the creation of the 1948 UDHR. Many global and national organizations support the mission, which is regarded primarily as a political step to implement the UDHR's fundamental values. Arguably, this process motivates public policy worldwide to facilitate better access for vulnerable groups. However, for those who continue to be subject to political oppression, social tyranny, civil brutality, and ethnic murder, the human-rights approach has ironically been narrowed down and restricted to political contemplation and power dynamics.

At first, the United Nations (UN) member states pledged to promote respect for the human rights of all people. To accelerate the achievement of this point, the United Nations established a Special Commission on Human Rights in 1994. They requested that the Commission draft a document to elucidate the fundamental rights and freedoms detailed in the UDHR. Guided by Eleanor Roosevelt, the Commission captured the world's attention. The Charter plays an essential role in human rights by providing a foundational framework for protecting people in worldwide. In Woods' opinion (2014, p. 37):

“The UDHR... is a political response to a particular historical moment. Still, it is deeply shaped by an earlier set of ideas about the moral significance of individual human beings held to be worthy of respect simply because they are human beings. It is informed by longstanding debates about the rights held by individuals by their humanity.”⁵²

Since the adoption of the UDHR, it has become evident that the world needs to do more to respect and protect human rights. The development of a workable strategy to promote, respect, and protect human rights remains at the center of international, regional, and national concerns. In this context, it is essential that national governments and NGOs determine global and national human rights protection systems; the growth of treaties, covenants, and international institutions still need a robust, concrete, and detailed protection framework.⁵³

The human rights approach has been widely explained, analyzed, and criticized in relation to the gap between human rights standards and the level of realisation many

50 Paul Gordon Lauren, “The Universal Declaration of Human Rights” in *Evol Int Hum Rights* (2014).

51 Andrew R Murphy, “An Introduction to Religion and Politics: Theory and Practice” (2015) Eur Leg.

52 Kerri Woods, *Human Rights* (London, United Kingdom: Bloomsbury Publishing Plc, 2014).

53 Goodman & Jinks, *supra* note 27.

individuals and groups are afforded.⁵⁴ This is connected to the state's lack of explicit normative guarantees and protection mechanisms.⁵⁵ The Organization for Economic Co-operation and Development (OECD) (2007) defines this problem as the inability of a state to perform the essential functions required to regulate its population and to develop and reinforce constructive relations with society (people). OECD reminds us, "States are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations" (p. 16). The state has a weak capacity and accountability channels in relation to its human rights obligations. It lacks the political capacity that is leaving minority citizens vulnerable to violence.⁵⁶

One of today's serious problems is the process of translating and applying human rights to various cultural contexts and local challenges. As Dembour concludes, "*Recognizing that different societies hold different values need not logically lead to the conclusion that all these different values and practices must be tolerated. The observation that cultures produce different moral norms does not say anything about the respective value of these norms*" (2014, p. 63). Therefore, the human rights approach aims to strengthen the implementation of human rights in constitutional, empirical space, multi-perspective, context, and experience.⁵⁷ It considers significant discourses on human rights mainly related to combining the philosophical basis with implementation schemes at the global, regional, national, and local levels.⁵⁸

Moreover, the World Bank in World Development Report (2011)⁵⁹ indicated generally a distinct correlation between the State's political incapability and the structural-systematic nature of human rights violations in this context. This statement legitimately refers to a history of recent violence and ongoing attacks against vulnerable minority groups in society. Human rights violations are closely associated with both active violation and a lack of state protection. Even in the absence of strong empirical evidence for a causal relationship between human rights violations and a lack of constitutional and (or) institutional protection, the international community is morally obligated to protect against human rights violations.

54 Hafner-Burton, Tsutsui & Meyer, *supra* note 7.

55 Olivier Nay, "Fragile and failed states: Critical perspectives on conceptual hybrids" (2013) 34:3 Int Polit Sci Rev.

56 Mendez 2013, "Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez." (2013) Hum Rights Counc 22nd Sess.

57 Javaid Rehman, "The Influence of International Human Rights Law upon Criminal Justice Systems" (2002) 66:6 J Crim Law.

58 Sally Engle Merry, "Transnational human rights and local activism: Mapping the middle" in *Dialogues Hum Rights Leg Plur* (2013).

59 *World Development Report: Conflict, Security, and Development*, by The World Bank (Washington DC 20433, USA, 2011).

V. ACCULTURATION AS AN APPROACH TO STRENGTHENING HUMAN RIGHTS

The role of duty bearers in human rights protection is central to the 1948 UDHR and other international covenants (IC). The state—institutions and actors—plays a crucial role in fulfilling fundamental human rights. Researchers, activists, and institutions on domestic and global levels continuously develop approaches to strengthen human rights worldwide. The crucial difficulty is constructing substantial compliance with human rights law, reflected by ongoing political projects and academic efforts.

Therefore, improving state capacity—one of the crucial weaknesses of human rights protection in Indonesia—has always been at the core of the human rights project. As Goodman and Jinks (2008) presented, the problem is how states are influenced in improving their human rights practices. Their efforts also address the central question of how international human rights law might better account for, and thus better harness, the mechanism of state influence. From this, they have introduced an acculturation-based approach as a theoretical framework to explore this issue⁶⁰ and centralizes their framework from a sociological perspective.⁶¹

They criticize previous scholarly approaches in international human rights law as 'an incomplete framework' before proposing the concept of acculturation to fill this gap. 'Acculturation' relates to two primary methods: *first*, reminding the coercive capacity of the States and individuals to comply with regime rules. *Second*, building persuasive mechanism to the State (and individuals) of human rights laws' validity and legitimacy. Goodman and Jinks (2004, p. 625) argue that previous approaches fail to understand and involve the dynamics and complexity of the social and cultural context where the state, its institutions, and citizens act.⁶² Their criticism also states that the methods seem to fail to consider complexities that mark how the diffusion of social changes on the one hand and legal norms, on the other hand, can occur.⁶³

According to Goodman and Jinks (2008), previous approaches serve as a 'reference group' that generate varying degrees of *cognitive* and *social pressures*—real or imagined—to confirm. They refer to these approaches as 'micro-processes of acculturation.' Using social psychology to explain individual behavior and cognition demonstrates the substantial normative social influence.⁶⁴ However, cognitive information is not enough to substantially impact human rights. Actors are also influenced and determined by their environment—explicitly taking 'culture' as the main element. The status of 'culture' or

60 Ryan Goodman & Derek Jinks, "Social mechanisms to promote international human rights: complementary or contradictory?" (2013) *Persistent Power Hum Rights From Commit to Compliance*.

61 Steiner, Alston & Goodman, *supra* note 23.

62 Goodman & Jinks, *supra* note 27.

63 *Ibid.*

64 Jessica M Nolan et al, "Normative social influence is underdetected" (2008) 34:7 *Personal Soc Psychol Bull.*

'learned behavior' is essential to complete social influence, not just cognitive information. Acculturation exists beyond two processes, including '*coercion*' and '*persuasion*'.⁶⁵

Furthermore, Goodman & Jinks (2004) present what they refer to as a complete conceptual framework, identifying a mechanism by which international law might change state behavior—*acculturation*:

“...acculturation is a conceptually distinct social process through which state behavior is influenced, and (2) the regime design recommendations issued from this approach defy conventional wisdom in international human rights scholarship. This exercise recommends re-examining policy debates in human rights law and provides a conceptual framework within which the costs and benefits of various design principles might be assessed (p. 621).”⁶⁶

Goodman & Jink (2008) developed further their idea:

“By acculturation, we mean the general process by which actors [target] adopt the beliefs and behavioral patterns of the surrounding culture. This complex social process is driven, at the bottom, by identification with a reference group [source] which generates varying degrees of cognitive and social pressures to conform to the behavioral expectations of the wider culture (p. 736).”⁶⁷

Put simply, acculturation refers to conformity to a set of values. This is defined as a 'social mechanism' that influences state behavior.⁶⁸ The conceptualisation of acculturation demonstrates its large scale in considering both the role of organizations and individual actors. It also explores the 'interlinking' between 'formal commitments' of the state on the one hand and a set of available actual practices on the other hand. It is important to note that the 'formal commitment' of global actors sometimes fails to change and reform local actors' concrete practices.⁶⁹

The practical focus of acculturation is to *narrow down* the gap between human rights commitments and local practices. This statement closely links with the Indonesian experience that refers to the gap between the national constitution's commitment to guaranteeing minority rights and local policies (regulation) that serve to restrict them. Goodman and Jinks conclude that there is some evidence that proves the narrowing of these two sides of the human rights framework. They explain several processes that show how global legal norms' commitment might be translated into more meaningful change

65 Goodman & Jinks, *supra* note 27.

66 *Ibid.*

67 Rita E Goodman & Derek Jinks, “Incomplete internalization and compliance with Human Rights Law” (2008) *Eur J Int Law*.

68 *Ibid.*

69 Courtney Hillebrecht, “Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights” (2012) 13:3 *Hum Rights Rev*.

over time for example, through local, social mechanisms rather than 'coercive' procedures imposed by the global community to influence domestic processes.

In this respect, the author refers to the acculturation theory of human rights development in relation to the problem of human rights in Indonesia and worldwide, mainly focusing on domestic contexts and challenges that constantly influence human rights commitments and practical aspects of realisation. As a conceptual framework model, 'acculturation' helps human rights studies detect the goodwill and the capacity of domestic state organizations and actors on the one hand and other civil society actors on the other hand in strengthening their level of human rights fulfillment.⁷⁰

Moreover, the combination of 'political opportunity' and 'social movement' has become a central requirement in considering acculturation as one of the most important foundations to support human rights in Indonesia, particularly, and the global context more broadly. The emergence of political opportunity could open another concern for domestic actors; the change in institutional structures and platforms could inspire social movement. The domestic government can trigger 'political opportunity' through two channels: *first*, they are motivated to initiate and create opportunities by themselves spontaneously. *Second*, they are driven by the global pressure to produce political openness and other legal steps that encourage actors to mobilize and become involved in the movement.

The steps taken by the state to sign and ratify international conventions (IC) (standards) can create a political opportunity structure (POS). Acculturation, then, is built based on the connection between the 'national level' and 'international nongovernmental organization.' This has been considered the main element in countering the violation of human rights. The POS mainly deals with state progress in producing effective policy change. Hafner-Burton & Tsutsui (2005) support this insight by stating:

“Government ratification of international law does not improve human rights practices alone, but a country's linkage to international civil society (through INGO memberships) can and does influence governments to change their human rights practices for the better. If a state has a tight link to global civil society, international nongovernmental actors are more likely to recognize and report on violations in the state. Domestic actors in tightly linked states tend to have a greater awareness of the rights they are entitled to and are more likely to find ways to publicize their problems and pressure the government to address them. Thus, states that are more embedded in international civil society (i.e., that have a greater number

70 Ryan Goodman & Thomas Pagram, *Human rights, state compliance, and social change: Assessing national human rights institutions* (2011).

of memberships in INGOs) are more likely to respect the human rights of their people (p. 1385).⁷¹

Acculturation also means a constant and constructive challenge to the weakness if national commitment to human rights protection. The synergistic spiral can develop actors' mobilization and movement in gradually improving the level of human rights protection. This mechanism mainly focuses on the rethinking and re-programming of domestic commitments of the state (government). Goodman & Jinks (2012) explained this statement:

“...but the correctable weakness of this approach is how it conceptualizes (or fails to conceptualize) the relationship between the various mechanisms of social influence. According to the "spiral model," international human rights norms, through various agents and in various ways, often mobilize each mode of influence. The assumption is that these mechanisms are broad, if not completely, complementary (2012, p.2).”⁷²

On this level, acculturation deals with the government's encouragement to show and make meaningful changes to and movements in the field.⁷³ While it is important to remember that the ratification of international human rights standards and conventions, for example, does not fully guarantee the protection of human rights, the process can still garner social and political capital, attracting public actors to become involved in the process. The essential thing in this stage is the domestic state's continuous intention to learn more in human rights discourse.⁷⁴

Policy intervention and legal structures can be designed to reduce or close the gap between formal commitment and actual practices. The two previous mechanisms support this process; first, persuasion through local social movements and international agencies. Second, global acculturation has inspired the government to raise its commitment to human rights protection. “of the national government (the National State) is to internalize the social process and other mechanisms.”⁷⁵ In this line, capacity is crucial for domestic institutions and actors in building acculturation as a primary human rights framework. Thus, acculturation emphasizes the role of social interaction in identity formation. This model can then involve *'surrounded cultures'* in the whole process.⁷⁶

71 Emilie M Hafner-Burton & Kiyoteru Tsutsui, *Human rights in a globalizing world: The paradox of empty promises* (2005).

72 Goodman & Jinks, *supra* note 48.

73 K L McCall-Smith, “Ryan Goodman and Thomas Pegrarn (eds), Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions.” (2013) *Hum Rights Law Rev.*

74 Christine Min Wotipka & Francisco O Ramirez, “World society and human rights: An event history analysis of the Convention on the Elimination of All Forms of Discrimination against Women” in *Glob Diffus Mark Democr* (2008).

75 Goodman & Jinks, *supra* note 55.

76 Goodman & Jinks, *supra* note 48.

This approach has been both valued and criticized by other academics. Mushkat (2009, p. 438)⁷⁷ affirmed that acculturation differs from the previous well-known strategies of 'coercion' and 'persuasion.' These two approaches have been considered mechanisms for promoting human rights law. First, *coercion* is based explicitly on a rigid system prioritizes pressure on 'recalcitrant actors' to follow or obey a set of values determined by external (global or other states) institutions. Second, *persuasion* – based on the soft approach – aims to recourse to conviction in installing intrinsic values and relevant norms. Mushkat (2009) links his study with this idea:

“In contrast, acculturation involves a norm-centered response on the part of relevant actors without direct stimuli, whether 'hard' or 'soft' in nature, originating from any authoritative source, at least in the *ex-ante* sense of the term. The process is presumably self-shaped for the most part and characterized by a high degree of spontaneity, although not necessarily the absence of formal deliberation and coherent structure (given that it is self-shaped) (p. 438).”⁷⁸

Furthermore, acculturation can be incorporated into academic work on international legal compliance (including human rights law) as a theoretical stance. On the one hand, this approach's most helpful contribution is strengthening the bottom-up trend in human rights promotion based on a solid academic foundation. On the other hand, the input of much field research brings new triggers to this theoretical framework in finding a prospective position in human rights discourse. However, when acculturation is closer to global-level patterns and study, it is essential to propose national-level case studies.⁷⁹

National-level case studies are essential to validate the acculturation process' effectiveness in strengthening and raising awareness of human rights. Mushkat—based on her 'Chinses case studies'—then challenges the 'acculturation-based approach' by presenting what she urged 'socio-cultural impediments' to promote and protect human rights (2009). She asserts both institutional and ideological sides in strengthening the acculturation mechanism of human rights development. According to her, power is a crucial point in the process. She also criticizes the problem of how the state modernizes its status and drives its whole approach to determine human rights protection effectiveness, meaning that the framing of social and political changes also places prospective and strategic contributions to the development of human rights promotion and protection.

77 Roda Mushkat, *Incomplete internalization and compliance with human rights law: A reply to Ryan Goodman and Derek Jinks* (2009).

78 *Ibid.*

79 *Ibid.*

VI. SUMMARY AND CONCLUDING REMARKS

This article has presented Indonesia's experience as one of the essential contexts for viewing human rights as an open discourse. It refers to the critical fact that the human rights situation in Indonesia faces both challenges and opportunities for the strengthening process. Indonesia can strengthen its human rights foundation through constitutional, political, and academic actions.

Indonesia can be an actual sample in exploring opportunities to strengthen the foundation of human rights, starting from a comprehensive understanding of the fragility of human rights. Indonesia raises three dimensions of challenges to human rights: (i) the gap between the normative implementation of human rights and implementation at the national level; (ii) the weakness of the political dimension in ensuring the fulfillment of the fundamental rights of citizens; and (iii) the community that is a source for the destruction of human rights. However, these three dimensions are a unique setting for Indonesia in seeking a practical approach to strengthening the human rights condition.

This article has offered acculturation as an integral approach to reducing the continuation of human rights fragile status in Indonesia. Acculturation prioritizes coherence between social and cultural components, strengthening the framework for protecting human rights. From this, human rights can become part of the cultural awareness and practice of society and the state.

However, this article has not fully explored the social and political challenges in presenting acculturation as a strategy to strengthen human rights in Indonesia. Future studies should take this issue seriously. This argument refers to the context of Indonesian society's social and cultural diversity. At this point, the cultural domination of one group (community) over another will complicate the application of acculturation as a strategic choice in strengthening the status of human rights in Indonesia.

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