

Decentralization and Local Elites' Role in Promotion of Human Rights

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I. INTRODUCTION

Statistical data indicated that in 2004 demographically, Indonesia has over 220 million people. By the existing population growth, it has been predicted that the number will probably reach 350 million by the mid of this century. This number appears to be the forth largest population in the world. The country consists of about 18,000 islands, and about 6000 of them are not yet occupied. Its territory covers about two million sq km of land and five million sq km of sea territories. This country is indeed a marine continent. The country has a great diversity in terms of languages, custom, traditions, ethnicities, and cultures. In Papua itself, not less than 300 local languages are spoken across the island. These local languages normally belong to different ethnic groups and cultural communities of the population. These languages are spoken in about a thousand of different dialects across the country. However, within this great diversity, Indonesia can adopt one national language, that is "Bahasa Indonesia". This is one of the greatest benefits to unify the diversity of the country.

During the past three decades, Indonesia's development was mainly based on the paradigm of "unity in uniformity." That means the approach to development was uniformed and homogenized, centralistic, focusing on economic growth and neglected those extremely large diversities of socio-cultural phenomena across the country. To maintain the approach, military forces including police were being inherent part of centralistic regime for over three decades. The implication was, the administration abused both civil and political rights and economic, social and cultural rights of the people. Further implication, social gap appeared to the most crucial phenomena during Soeharto's administration.

In human kind history, no single regime or administration remains sustained in such approach.

Fortunately, after Soeharto's step down in 1998, under President Habibie administration Indonesian people have had the chance to rebuild a more democratic system which also respects human rights by applying *unity in diversity* paradigm. The new governments has been gradually becoming more committed to carrying out legal reform and to respect and protect human rights. This commitment was demonstrated by, among others, the following policies:

First, the abolition and revision of several laws and regulations which in the past were very oppressive to the people and violated the

people's rights. Among these laws were the law on Anti-Subversion and the law on Political Parties. The law on Anti-Subversion was very oppressive and often used to take away the people's freedom of expression. The law on Political Parties was also violating the political rights of the people because it limited the number of political parties to only three and limited access of non-ruling political parties to the grass root level. Last 2004 election, 24 political parties participated in general election.

Second, In this transitional period Indonesia has also carried out four occasions amendments to its 1945 Constitution. Among the most important amendments for promoting democracy and human rights is the abolition of appointed representatives of functional groups in the Parliament and additional of a special chapter on human rights. Moreover, the amended constitution also required a number of new pieces of legislation to further promote democracy and human rights respect.

Third, in the field of human rights, during this transitional process the law on human rights (No.39/1999) and law on human rights court (No.26/2000) were introduced. The law on human rights has basically adopted the existing provision in the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the Covenant on Economic Social and Cultural Rights as well as the relevant Conventions on women and children. The law also strengthened the legal basis of the position of the National Commission on Human Rights. The law on the Human Rights Court established the Human Rights Court in Indonesia, I think this is the first national human rights court in the world. The law has adopted some provision in the International Criminal Court (ICC). Beside the National Commission on Human Rights, during the transitional process, the Indonesian government established a State Minister on Human Rights Affairs in 1999 which later in 2000 was merged to the Ministry of Justice and Human Rights. The government in 1998 also developed a National Plan of Action on Human Rights (RANHAM) for five years. The RANHAM has been implemented by a national committee consisting of the relevant institutions representing

government, NGO, civil society institutions in dealing with human rights, including the National Commission on Human Rights and the Ministry of Justice and Human Rights is the focal point to the implementation of the plan.

Fourth, the law on Truth and Reconciliation Commission (TRC) to deal with the past gross violation on human rights have been made. This law provides comprehensive mechanism to solve the past gross violation on human rights as complementary to the existing human rights court mechanism. It is a extra-judiciary mechanism to solve the pass gross human rights violation.

Indonesia in transition

In 2004, Indonesia as a democratic country successfully conducted a general election for members of the parliament, and the first and the second round of presidential election. It is for the first time that Indonesian people elected all members of the parliament representing a new political system which put Indonesian military out of the political body. It is also for the first time that the people elected directly the president and vice president. The successful general election represents the progress in the promotion and protection of civil and political rights in Indonesia. The democratic transition under way in Indonesia, the largest majority Muslim country in the world and now the third largest democracy, represents an important development taking place in Southeast Asia region, and indeed, in the world at large.

The series of democratic elections in Indonesia in 2004 produced a sea change in its domestic politics. The voters brought into office a new, the very first time ever, directly elected President, Susilo Bambang Yudhoyono, and Vice-President, M. Jusuf Kalla. President Yudhoyono has a genuine mandate from the Indonesian people. He won 60 percent of the votes. 75 percent of eligible voters cast their ballots more than 100 million voters. This demonstrates the very strong commitment of Indonesians to democracy.

The elections were recognized widely as transparent, democratic and accountable. It is

praised as shining example that democracy is applicable in the largest Muslim population country in the world. Former President of the United States Jimmy Carter after observing directly the Presidential election stated that "Of the largest three democracies, one is Christian, one is Hindu and one is Muslim", "So there is no monopoly on democracy because of religious commitment".

The 2004 presidential election was one of important institutional changes since 1998, when President Suharto stepped down from his office. The direct presidential election itself was a product of sweeping constitutional reforms aimed at strengthening democratic institutions, accountability and transparency, and separation of powers.

Other notable reforms have included the establishment of a police force separate from the military (TNI), the end of the military's appointed seats in parliament.

A free press and an increasingly active civil society have become important agents of change. Citizens are demanding justice from the judicial sector.

Equally important to note is that the country is going through one of the most ambitious decentralizations efforts ever. That process is empowering Indonesia's 33 provinces and 443 districts/municipalities, spread about 18,000 islands and introducing unprecedented levels of transparency and accountability into local governance.

All these changes have shown that people of Indonesia are ready for democracy. Without any doubt, they deserve recognition and support from of the international community. People of Indonesia are committed to continue their progress on democracy, human rights, and justice. We envision an Indonesia that is democratic in the full sense of that term, a government that is transparent and accountable to its people, respects the rule of law, and promote and protects the human rights of its citizens.

Indonesia's commitment to the promotion and protection of human rights

As a reflection of its strong commitment to the promotion and protection of human rights, Indonesia decided to present its candidature for membership at the Human Rights Council, a newly-created United Nations body overseeing the promotion and protection of human rights. On 9 May 2006, the United Nations General Assembly elected Indonesia as one of the first 47 members of the Human Rights Council.

Indonesia is a State Party to principal international human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which are just recently integrated to the Indonesian national legislation effective on 23 May 2006.

Human rights in Indonesia are ultimately protected and defended by domestic laws. Indonesia has incorporated detailed provision on human rights in its constitution and in other national legislation.

Indonesia has a robust National Commission on Human Rights since 1993 and has established other human rights-related national commissions such as on the Rights of the Child and on Women's Rights. Indonesia is currently implementing nation-wide human rights mainstreaming programmes. Indonesia is proud of its vibrant human rights civil society organizations and its free and dynamic press as important pillars of democracy.

It has national blue prints for the promotion and protection of human rights since 1998, and is now implementing its second national human rights action plan for the period of 2004-2009. In order to ensure an effective and coordinated implementation the national human rights action plan throughout Indonesia, in addition to the existing National Committee as the coordinating agency in the capital, local committees were already put in place at the province, district and municipality levels.

Decentralization: Challenges and Opportunities

One of the hallmarks of the democratization process of post-Suharto era for the past eight years is the monumental shift from central politics to local politics. In 2001, Indonesia embarked on one of the most ambitious decentralization efforts in the world, with local governments assuming many new responsibilities that were previously the purview of the central government.

The centralism of power in Jakarta now has been subsided by the political decentralization process. Law no.32/2004 on regional government has opened the opportunity for the widespread localization of politics. For the very first time Indonesia holds direct election for heads of region at provincial (governor) and district/municipality level (regent/mayor). Starting from middle of the year 2005, there are 226 region elections: 11 governors at provincial level; 179 regents at district level, and 26 mayors at municipality level. The elections will involve 24 political parties constituting main actors of the local competition.

The localization of politics is a test case for the success of the local democratization through decentralization process. Observers may see that the democratic political process at work in Indonesia is on the right track. All standard democratic institutions have been established and civil and political freedoms are guaranteed: people have the freedom to establish a party or a union, to participate in independent social and political associations; heads of districts and mayors are to be elected directly by the people; freedoms of expression and press are guaranteed; freedom of religion is guaranteed and practiced.

But of course democracy is not only confined to civil and political freedoms. Democracy will only blossom if we take care other prerequisites of civil supremacy; supremacy of law; independent and just judiciary; transparent, accountable and good governance that is responsive to public needs; robust civil society organization; and respect for human rights.

One of the features of decentralization is the call for the separation of administration an

d legislature at local levels in favor of the check-and-balance function between the two institutions.

The most apparent phenomenon in the process of decentralization is that local democracy has been dominated by local elites, who have the dominant influence in local affairs, especially in politics and government. All political processes can be manipulated for their own interests by these elites: bureaucrats, police, military, politicians, members of parliament, business and social organization actors, informal figures. Rivalries among elites for power, influence and greed are crucial factors for the local democratization process, prone to tension. These worrisome developments should be averted; otherwise they will weaken the forces of local democracy.

But, there are favorable developments, too, in the implementation of decentralization. Some local governments are sporting local initiatives especially in public services (one-stop public services, easy access to basic rights in health and education). These initiatives greatly increase the level of transparency in public services, allowing little room for irregularities. By so doing, these local governments succeeded in restoring local population's confidence in local governance and, at the same time, fulfilling the basic human rights in public health and education.

There should be a viable framework to address sustainability and maintenance of these favorable developments. It is imperative the need to strengthen the pro-democracy movement at local level. How can we do it? Such undertaking can be facilitated by taking on board the framework as provided for by the National Action Plan on Human Rights. President Yudhoyono has declared the Action Plan as a national movement. The Action Plan serves as the basis for the medium-and-long-term development plan adopted and prescribed by the present government.

National Action Plan on Human Rights

The Government of Indonesia has launched a National Plan of Action on Human Rights of the year 2004-2009, as stipulated in a Presidential

Decree no.40/2004 of 11 May 2004. The objective of the National Plan of Action (RANHAM) is to ensure the implementation of human rights promotion and protection in Indonesia.

RANHAM focuses its special attention to serve the needs of individuals and communities vulnerable to human rights violations, including children and women. RANHAM will be implemented in a five-year program. A National Committee directly under and shall report to the President of the Republic of Indonesia is established to implement the RANHAM. Minister of Law and Human Rights is acting as Chair person of the National Committee and the Director General of Human Rights Protection is acting Vice Chair person of the National Committee consisting of forty institutions involved including Human Rights National Commission.

The National Committee is responsible for coordinating the implementation of RANHAM in Indonesia covering six main pillars of activities: (1) establishment and strengthening of the institutions responsible for RANHAM implementation, (2) ratification of international instruments on human rights, (3) harmonization and legislation of laws, (4) dissemination and education, (5) application of norms and standards of human rights, and (6) monitoring, evaluation and reporting.

In order to ensure the implementation of the RANHAM activities at the regional level, a local committee shall be established and report to the Governor of the Province and National Committee.

The National Committee submits to the President an annual activity report. So does the local committees to the National Committee and the Governor of the Province. These annual reports shall be publicized as the realization of a public accountability principle.

RANHAM is systematical and its comprehensive approaches are projected to address the problems of vulnerable groups, including children and women. It is a common denominator to both

central and local authorities to promote the respect for human rights, rule of law, social cohesion. It serves as a common platform for central and local governments to prevent any possibility of social conflict at any level of society. It also provides a clear direction and guidance to government, NGOs, professional groups, educators, media and civil society institutions to undertake their roles and duties to promote and protect human rights.

RANHAM helps strengthen the capacity of municipality, district, provincial and national democratic institutions in promoting and protecting human rights. And it promotes awareness of human rights to those who are in the frontline to promote and protect human rights: law enforcement agents, correction officials, politicians, public servants and social workers.

The full implementation of RANHAM Indonesia 2004-2009 at municipality, district, provincial and national levels focusing on the protection of vulnerable groups, including children and women, could serve as indicators of what measures taken and what achievements made in Indonesia in order to implement the provisions of the principal international human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

As mandated by the Presidential Decree no. 40/2004, the Department of Law and Human Rights, is the seat of the National Committee for the implementation of National Plan of Action of Human Rights in Indonesia for the period of 2004-2009. It oversees and supervises the provinces, districts and municipalities throughout Indonesia on their conduct as the focal points for the implementation of the Plan at the regional level.

The role of provincial governments, districts and municipalities has become crucial and strategic, as they are the vanguards for the effective implementation of the National Plan of Action. To support such forefront undertaking, there is an imperative need for a community-based campaign to raise the awareness of the population

on the implementation of the Action Plan. It is of the view that the local (political) elites and bureaucracy could provide such support. They can play their role as agents of change and commission themselves to be eligible as resource person for the community agents for social transformation at grass-root level influencing the thinking and changing the mindset of the community to respect more for human rights.

The way forward

To promote local reform movement or democratization through respect for human rights and decentralization, local elites and bureaucrats should assume their responsibility to prescribe the following citizen-friendly measures:

- ensure that the rights of the people are properly exercised in securing public participation in the formulation of the policies especially those affecting the welfare of the people;
- develop local regulations that ensure the well being of the people, especially the most vulnerable groups to the human rights violations, especially children and women;
- develop proper channel of communication (free and at equal level), from provincial down to village level, for making the people able to make contact with local elites to address citizens' needs, interests and aspiration;
- empower citizens to have the capability to promote their aspirations and implement them
- empower the capacity of local elites (parliament and bureaucracy) to have the courage and ability to deliver their citizen constituents' aspirations
- strengthen the capacity local civil society organizations as partners to citizens and elites to promote the respect for human rights and democratization
- empower local elites with support of CSOs and citizens to implement National Action Plan on Human Rights 2004-2009