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Controversies behind the Idea of Universal Human Rights: A Malaysian Perspective

ABSTRAK

Persoalan hak asasi manusia merupakan suatu isu yang sering menjadi perdebatan semenjak berakhirnya Perang Dunia II (1939-1945). Pengisytiharan Deklarasi Hak Asasi Manusia pada tahun 1948 oleh Pertubuhan Bangsa-bangsa Bersatu bertujuan untuk menetapkan satu nilai umum berkenaan hak asasi agar dapat dihormati dan dipatuhi oleh negara dan masyarakat antarabangsa. Walau bagaimanapun, nilai dan sifat kesejagatan deklarasi tersebut terus menjadi perdebatan dan pertikaian. Artikel ini secara khususnya akan membicarakan serta menghujahkan bahawa adalah sukar untuk seluruh masyarakat antarabangsa yang berbilang bangsa dan agama bagi mencapai kesepakatan berkaitan kesejagatan hak asasi tersebut. Terdapat pelbagai isu yang sering diperdebatkan berkaitan hal tersebut. Persoalan-persoalan yang selalu diperdebatkan ialah pengertian hak asasi itu sendiri, kecenderungan persoalan tersebut kepada pemikiran Barat, persoalan kedaulatan, kepelbagaian budaya dan konflik nilai, serta kelemahan yang terdapat di dalam Pertubuhan Bangsa-bangsa Bersatu bersabit penyelesaian pelbagai isu-isu hak asasi diperingkat antarabangsa. Negara Malaysia pun memiliki wawasan dan dasar mengikut acuan sendiri yang bersabit dengan isu-isu hak asasi manusia ini.

Kata-kata kunci: *kesegajatan Deklarasi Hak Asasi Manusia 1948, kepelbagaian nilai dan budaya, serta penyelesaian isu hak asasi di peringkat bangsa dan antarabangsa.*



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INTRODUCTION

Human rights is an issue that has gained much public debate over the past 60 years, mainly starting with the end of World War II (1939-1945). Since the inception of Universal Declaration of Human Rights (UDHR) in 1948, its universality and the role of the West in formulating those rights, continues to be debated.

In a book written by Jack Donnelly, human rights is defined as “the rights one has simply because one is a human being-*droits de l'homme, Menschenrechte, the rights of man*” (Donnelly, 1996a and 1996b). Simply put, human rights are the rights that people have simply by virtue of their humanity. The question is: are human rights universal or are they a “Western value” and therefore inappropriate and irrelevant to other cultures?

Although it is defined from a number of different perspectives, there is widespread of international political consensus about human rights (Donnelly, 1993:24). This agreement is evident in the significant body of international law of human rights which was developed by the United Nations. The first and most important legal document on human rights is the Charter of the United Nations that honors “fundamental human rights” and calls on states to promote “*respect for human rights and for fundamental freedoms for all without distinction [...]*” (article 1, cited from *Charter of the United Nations*, at <http://www.un.org/aboutun/charter/>, 15/5/2008).

The UDHR emerged in the aftermath of World War II, when the international community realized the need for a codified mechanism to protect human rights. The UDHR was the product of a two-year drafting process by representatives from Australia, Chile, China, France, Lebanon, the Soviet Union, the United Kingdom and the United States of America. On 10 December 1948, the Universal Declaration of Human Rights (UDHR) was passed, unopposed, by the United Nations General Assembly, while the Soviet Union, Saudi Arabia and South Africa abstained (Segal, 1993:58). To quote Andrew Clapham that:

The declaration establishes a broad range of civil and political rights, including freedom of assembly, freedom of thought and expression and the right to participate in government. The declaration also proclaims that social and economic rights are indispensable, including the right to education, the right to work, and the right to participate in the cultural life of the community. In addition, the preamble boldly asserts that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law” (Clapham, 2001:368-370).

Other important international human rights agreements include International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the Latter Covenant (Smith, Cox & Burchill, 1997:26). When the Universal Declaration of Human Rights was proclaimed in 1948, it was viewed as the stepping stone in the formulation of an “International Bill of Rights” that would

have legal as well as moral force. Indeed in 1976, this became reality with the entry into force of those three significant instruments mentioned above (Buergethal, Shelton & Stewart, 2002:59).

Yet everyday, throughout different countries around the world, human rights have been continuously violated. When people have the right to food, many are starving. People who are assumed to have freedom of thought are imprisoned and tortured for their beliefs, the poor are victimized and minorities are denied access to equal rights. Is human rights an essentially Western concept that ignores cultural, economic and political realities of other parts of the world? Can human rights be applied universally?

Thus in this paper, we argue that it is quite impossible to have a universal standard of human rights due to the complexities of international systems and cultures that seemed to be the great challenge to the idea. We shall explain and discuss some of the issues which have made the idea of universal human rights so controversial. In doing so, we divide the essay into six parts, with each part focusing on one particular issue. We may not be able to touch on all issues, but it is suffice to say that we have selected the important ones which manifest controversies behind the idea of a universal human rights.

THE NOTION OF "RIGHT"

Despite the widespread of public support for conventions such as the UDHR 1948, however, states hold widely different perspectives on the nature and priority of human rights. The plurality of human rights conceptions has been reflected in the "expanding" list of international rights.

Part of the controversy over universal human rights is the basic nature of rights itself. When we speak about human rights we would normally understand as the form of standards that there are certain moral claims to which all human beings support simply because we are humans.

Gerard Elfstrom, in his book, explains that citizens of the United States of America, for example, claim that they have the basic rights which is written in the Bill of Rights of the United States Constitution. This means that every citizen of the United States has certain entitlements that are given and protected by the law of the country (Elfstrom, 1998:70). Should there be any rights being violated, people may go to the courts to seek for justice.

However, according to him, those rights are legal rights in the sense that they are preserved by the law of a particular nation. Thus, it only applies to the people of the United States (Elfstrom, 1998). The conception of the universal human rights is broader than that of legal right since it refers to the rights that should be respected by all human beings around the globe.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A WESTERN BIAS?

According to article 1, Universal Declaration of Human Rights 1948, that "All human beings are born free and equal in dignity and rights. They are

endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (cited from *Universal Declaration of Human Rights* at <http://www.unhchr.ch/udhr/lang/eng.htm>, 15/5/2008).

The Universal Declaration of Human Rights sets forth the basic civil, economic, political and social rights and freedom of every person. It states that all people are born free and equal in dignity and rights. Its preamble states that the declaration is meant to serve "as a common standard of achievement for all peoples and all nations" (see article "Human Rights", 2000:428).

Many have argued that the concept of human rights is a Western one. Specifically, the members of the drafting committee of UDHR, the Commission of Human Rights and the United Nations as a whole were predominantly Western (Richard, 2000). Many Third World countries' commentators have noted about the relative absence of Third World participation in the formulation of the Universal Declaration. It was not until 1950s when the process of decolonization took place, leading to the formation of new African and Asian states (Howard, 1986:2). Having said that it is important to note that the membership of the United Nations was a critical factor in shaping the Universal Declaration of Human Rights.

Besides, the initial discussion of the UDHR was called "the drafting of an *International Bill of Rights*", a language which is said to be indirectly indicates an "American flavour". Obviously, this claim remains a sensitive issue to raise (Vincent, 1986). In fact, many of the rights listed in the first portion of the document are also said to be familiar to readers in Western European nations, which include freedom of speech, political association, religious practice and among other rights.

Meanwhile the rights listed in the second portion state about the rights to education, good health and so on. According to Gerard Elfstrom, the latter portion of the declaration is quite odd to be regarded as moral entitlements because many nations, especially the Third World countries, "[...] lack the material or human resources to fulfill such expectations" and are not likely to at any time in the new future (Elfstrom, 1998:71). However, he explains that the rights which are listed in the first portion of the declaration would seem to be easily applicable even with nations with few resources (Elfstrom, 1998).

SOVEREIGNTY

According to Richard A. Falk, sovereignty is "enshrined" in the United Nations Charter and firmly established in international law in a variety of exercised doctrines such as the "[...] sovereign equality of states, non intervention in domestic affairs and sovereign immunity" (Falk, 2000:70).

However, sovereignty of a country is also a great challenge to the promotion of universal human rights. It is one of the principles of international law that a state "may limit its sovereignty by treaty" and therefore internationalize a particular subject or area that would otherwise not be regulated by international law (Buergethal, Shelton & Stewart, 2002:6). For instance, if a state agrees upon

a treaty with another state in which they agree to treat their citizens humanely and to provide them with certain rights, they have to the extent of that agreement, internationalized that particular subject. This principle is extremely important in the development of international human rights law and the gradual internationalization of human rights.

In a sovereignty system, the politics of rights is about the exercise of political influence rather than legal decisions. States tend to maintain their rights by trying to avoid foreign influence over their decision making process. Chris Brown explains that adherence to the international human rights legislation is in a way driven by the exercise of influence. Having said that, he contends that most states do not want to be seen as violators of human rights. On the other side of the coin, when there are crucial issues at stake, states are reluctant to allow influence from "outside" to decide or "teach" them what to do and not to do (Brown, 2002:8).

The situation becomes even more complex in the tension between governments and the enforcement of universal standards of human rights. A good example which we would like to mention here is the capital punishment which is part of the law in Malaysia. In 1985, two Australians were found guilty of possessing heroin between them. Their case caught international attention at the time when the death sentence was passed in July 1985. Even the Australian Prime Minister at the time, Bob Hawke, described the execution as "barbaric", a comment which seems to have made a lasting impression to the relations between Malaysia and Australia (Camilleri, 2001:97).

The execution of Barlow and Chambers had not only focused international community on the country's judicial image, but also its human rights image. On the other hand, the case was termed as a matter of "national security" by Malaysian Prime Minister, Dr. Mahathir Mohamad, since the problem of drug trafficking and drug addiction were so serious in Malaysia (Gunn, 2000:115). The government believed that the capital punishment as to be a "righteous act" that cleanses society of evil and corruption. Even today, capital punishment still exists in the country. From this incident, it was evident that the controversy had somehow "soured" the diplomatic relationship between these two countries over the issue of human rights.

Another country which is very critical about the implementation of universal human rights is China. China's record of human rights has long been criticized when the popular demand for human rights become a driving force for political change. Consequently, however, it led to the reassertion of authoritarian leadership and the abuse of civil rights. If we refer to the Constitution of the Peoples Republic of China, it states that a Chinese citizen shares the "[...] full complement of rights that members of modern. Western liberal democracies have come to hold so dear: freedom of speech, press, association, religious belief and practice and so on" (Peerenboom, 1996:293).

The Tiananmen Square massacre in 1989, however, had worsened China's human rights image. In this incident, many of their citizens were killed and many others wounded when they organized a demonstration demanding a

greater democracy in China (Elfstrom, 1998:73). This brought international attention on the condition of China's human rights. In response to that, the government in China had accused the West of seeking to use alleged human rights abuses to interfere in the domestic affairs of developing countries. They argued that such practice had not only violated the norms of international relations, but also undermined the basis of international cooperation on human rights (Healey, 1993:6).

Richard A. Falk states that many Third World countries questioned the gross-sidedness of "interventionary diplomacy" by the West (Falk, 2000:192). Many of the South countries feel that their sovereign rights have been infringed by the North's championing of human rights. There is even evidence that the developing nations identifies human rights initiatives from the North as a new form of colonialism-something that "[...] deserves resistance rather than acceptance" (Falk, 2000:73).

CULTURAL RELATIVISM: A CONFLICT OF VALUES?

Fernando R. Teson defines cultural relativism as "the position according to which local cultural traditions (including religious, political and legal practices) properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society" (Teson, 1996:118). Through this definition, it means that what maybe regarded as a human rights violation in one country may be considered as lawful in other country, which indirectly means that Western ideas of human rights is difficult to be imposed universally.

Obviously, the tension between national sovereignty and the enforcement of international standards of human right is evident when governments give reasons like national cultural traditions as an excuse to comply with international law. This is usually the case and thus, in one way or the other becomes a great challenge to the implementation of universal human rights (Teson, 1996:118).

Jack Donnelly in an article writes about human rights and human dignity by comparing the Western idea of human rights with other non-Western conception of human rights. He defines human rights as "rights, not benefits, duties, privileges or some other perhaps related practice". In other words, rights in turn are special entitlements of persons. He further explains about the non-Western political cultures and human rights in Islam, traditional African societies, China, India and the former Soviet Union (Donnelly, 1996a:148).

As in Islam, he criticizes some of the Muslim scholars whom he believes have not understood the real meaning of human rights. He contends that human rights in Islam are "only duties of rulers and individuals, not rights held by anyone". Right, he said, is not even an obligation of others but an obligation of the allegedly right holder. He clarifies that "Islamic human rights" is actually not human rights but "divine commands which establish only duties, that is, which deal only with right in the sense of what is right" (Donnelly, 1996a:151).

Perhaps the image of Islam in the Western world is savage, intolerant, fundamentalist and oppressive upon women. Since so many of the so-called

“breaches” of human rights took place in Islamic societies, it therefore useful to discuss in brief on what Islam has to say pertaining to human rights. In the real teaching of Islam, the religion preaches the dignity of each and every human soul and that men and women are equal.

According to Abul A’la Mawdudi, a well-known Islamic scholar, human rights in Islam means the rights which have been granted by God (Mawdudi, 1980:15). In other words it is an integral part of Islamic faith. Having said that, all Muslims and administrators who claim to be Muslims have to accept, recognize and enforce them. Amongst other things, Islam protects:

First, the Right to Life. The Holy Qur’an states that the first and foremost basic right is the right to life. It has laid down, “Whosoever kills a human being (without any reason like) man-slaughter, or corruption on earth, it is though he had killed all mankind” (5:32). Another verse states “Do not kill a soul which Allah has made sacred except to the due process of law” (6:151).

Second, Individuals’ Right to Freedom. Mawdudi explains that Islam has categorically prohibited the primitive practice of capturing a free man “to make him slave or to sell him into slavery”. In the equivocal world of the Prophet Muhammad (peace be upon him), “There are three categories of people against whom I shall myself be a plaintiff on the day of Judgement. Of these there, one is he who enslave a free man, then sells him and eats his money”.

Third, the Equality of Human Being. In Islam, generally, all human beings are equal in the “eyes” of God. The Holy Qur’an lays down, “Indeed the noblest among you before God are the most heedful of you” (49:13). In the words of the Prophet Muhammad (peace be upon him), “No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over a black children of Adam, and Adam was created from clay” (Bayhqi and Bazzaz). In this respect, Islam established the principle of equality of the entire human race and dismisses the distinctions based on colour, race, language or nationality (Bukhari and Ibn Maja as cited by Mawdudi, 1980:15-25).

This is supported by Muhammad Abd. Rauf in his book *Ummah: The Muslim Nation*, from which he contends that rights of every human being, “[...] be it a family, a clan, a tribe, or a nation, must be respected and protected”. This indeed was stipulated in the saying of the Prophet Muhammad SAW (*Salallahu ‘Alaihi Wassalam* or peace be upon him) as follows:

O you people! Listen to me! Allah (the Almighty God) has indeed made sacred and forbidden your property and your blood and your honour as much as he has made sacred and forbidden this Day and this Month and this City, until you meet with you Lord. Let it be known that no Arab may claim a merit over a non-Arab; nor may a non-Arab claim a merit over an Arab. Only righteousness may count (as cited by Abd. Rauf, 1991:71-72).

Having discussed the above, we would disagree with Jack Donnelly. We do not agree with his claim that moral systems which are duty-based cannot accommodate human rights. For example, members of a society have a duty to

take care the welfare of the elderly, then the elderly could be said to have a right to proper care. The point is that just because the principle of some people is not that of rights does not mean that human rights cannot be universal. Besides that, those violations of human rights that take place in the Muslim world (for instance the discrimination against women), from our general observation, are due to the misinterpretation of the religion.

In discussing the above broad issue as the difference between the West and non-Western conception of universal human rights, it is also noteworthy to discuss the opponents to this concept, which greatly comes from the Third World countries. One of them is the campaign for Asian values. The past decades have witnessed two prominent leaders from South East Asia, the former Malaysian Prime Minister, Dr. Mahathir Mohamad, and the former Prime Minister of Singapore, Lee Kuan Yew, whom had engaged themselves in a campaign against Western efforts to “teach” Asians about democracy and human rights. Moreover, Malaysia and Singapore were said to be the driving forces behind the Bangkok Declaration 1993, which had warned against using human rights as an instrument of “international pressure” (cited from Tonnesson, “Do Human Rights” available at <http://www.brainsnchips.org/hr/hasianva.htm>, 15/5/2008) and were unhappy with the Vienna Declaration of Human Rights in 1993 organized by the United Nations.¹

The question indeed forces itself as to how different is Western human rights from that of Asian? One argument says that Asian emphasizes more on collective and not individual values (Kent, 1989). Human rights as propounded in the West is founded on individualism and therefore is said to be no relevance to Asia which is based on the primacy of the community. Each human being thinks of him or herself not as an individual, but as daughter, son, wife, father, etc.

Thus, it comes naturally for Asians to let the combined interests of the family and the nation to go before the interests of each individual. For example, if in the West people are given minority rights (such as gays and lesbians), the situation is however different in Asia. Of course home sexuality is found almost in all societies, but when it is accepted and glorified, according to Mahathir Mohamad, then the practice will spread even among those not ambiguously created by nature.

Individual freedom knows no limit. In the name of individual freedom, anything can be done even to the extent that it will hurt the community. Meanwhile, Mahathir Mohamad argued that the Asian values have not destroyed the society. Indeed, they have helped them to maintain a balance in the contest between evil and good. To quote Mahathir Mohamad, “We should hang on them despite the sneers of the liberals and the modern” (Mohamad, 2000:29).

¹The *Vienna Declaration of Human Rights* is a comprehensive statement on international human rights, which was adopted in Vienna in 1993 by 171 countries and emphasize social, economic and cultural right. This conference was the largest international gathering on human rights since 1948.

Another argument states that Asians are more concerned with duties than right (cited from Tonnesson, "Do Human Rights" available at <http://www.brainsnchips.org/hr/hasianva.htm>, 15/5/2008). Stein Tonnesson explains that an exaggerated emphasis on rights would lead to egoism. A sense of duty contributes to a responsible behaviour (Tonnesson, 2008). Therefore, it is important for an Asian to act in accordance with the norms that apply to the role he or she occupies in the family as well as in society at large.

Meanwhile, Yash Ghai writes that some of the Asian governments consider that the Western "pressure" on them to improve their human rights in their respective countries has the connection with the Western agenda of global hegemony. He further elaborates that this is achievable partly through the "universalization of Western values and disorientation of Asian state and political system" (Ghai, 1996:225).

Interestingly, there are also counter arguments to such claims. The West argues that many of the claims made by the Third World countries are actually being used by authoritarian types of government in order to "divert" the attention from their unwillingness to adhere to the international standards.

THE UNITED NATIONS "SOFT TEETH"

Another controversial issue pertaining to the universality of human rights is the role of the United Nations itself. The United Nations is criticized for its incapability to address some of the most fundamental violations of human rights, which are still occurring throughout the world. There are wide ranges of human rights instruments and procedures which continue to document certain violations done by governments but little progress can be seen towards the elimination of such acts.

In other words, although a legal basis has been established for individuals to hold their governments to international standards of human rights, the United Nations efforts lacked the "teeth" to implement them (Elfstrom, 1998:71). There is a clear lack of political will on the part of member states of the United Nations to confer on its human rights mechanisms the necessary authority and capacity for action that would enable the international body to play a prominent role in the promotion and protection of human rights.

This was really the case during the Cold War when the international body was unable to operate effectively due to "political intervention" of the major powers in the Security Council (Smith, Cox & Burchill, 1997:214). They have no sanctions behind them, no force, physical or moral, to enforce them. Despite all the high-sounding resolutions of the United Nations, human rights continue to be violated and trampled upon (Segal, 1993:58).

HUMAN RIGHTS AND THEORIES OF INTERNATIONAL RELATIONS

Liberals hold the view that encouraging human rights is a legitimate goal of foreign policy. The liberals are likely to do "anything" in order to uphold human

rights. They assume that there is no difference between personal and public morality. They believe that if it is wrong for individuals do something, it is also wrong for states. The liberals' task is said to be developing and promoting international moral standards although at times states would have to "jeopardize" their national interests (Burchill, 2001:41).

According to Chris Brown, realists theorists do not employ the language of rights at all (Brown, 2002:7). Realists regard human rights as merely "one of the many transitory issues" of international relations. They contend that states shall not "bow" to any supranational power. In other words, states have the options on whether to comply or to ignore human rights. To realists, *raison d'etat* or reason for being of a state may sometimes override the demands of national interest (Smith, Cox & Burchill, 1997:214). To quote John Vincent, "The society of states should and does concern itself with rights, but they are not the rights of individuals, or even of nations, but of states" (Vincent, 1986:126).

Rationalists on the other hand view the nation of universal human rights as the "shifting" process of global politics from a "state-centric" perspective to a multilateral form. They explain that with the passage of time, human rights have been "maneuvered towards the central agenda of international order". Thus, in a gradual progressive manner, state will finally accept and recognized human rights principles as their interest. The role of international law and multilateral diplomacy as instruments is really critical that will integrate human rights within the international legal framework (Smith, Cox & Burchill, 1997:203).

CONCLUSION

All in all, in this essay we have attempted to clarify some of the controversial issues pertaining to the idea of universal human rights which apparently have conflicting positions. In short, it can be said that the controversy about universal human rights comprises of two discussions. *First* is the idea whether it is sensible to talk about universal moral standards that apply to all human beings. *Second* is the question of how human rights should be dealt with.

Each violation of human rights, no matter where it occurs, is a threat to the welfare and dignity of the entire humanity. The protection of human rights therefore is an international responsibility which passes all racial, ideological and geographical boundaries.

In this respect we believe that the acceptance of universal human rights could only be achieved through equal respect and mutual understanding among the "competing" cultures. What remains to be determined is the extent to which the Universal Declaration of Human Rights is, in fact, based on values shared by all systems.

In the end we must try to avoid the thinking that all people share a single moral concept, because it is obviously contrary to the reality. Nevertheless, we shall not stop the quest for universals. The question which is left to be answered is what particular standards do all societies have in common?

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