

Constitutional Perspective of Human Rights Values in Local Wisdom in the Special Region of Yogyakarta (Study of Constitutional Court Decision No. 88/PUU-XIV/2016)

Triwahyuningsih

Universitas Ahmad Dahlan, Indonesia
triwahyuningsih@ppkn.uad.ac.id

Siti Zuliyah

Universitas Ahmad Dahlan, Indonesia
siti.zuliyah@law.uad.ac.id

Uni Tsulasi Putri

Universitas Ahmad Dahlan, Indonesia
uni.putri@law.uad.ac.id

Zulfiani Ayu Astutik

Ankara University, Turkey
astutik@ankara.edu.tr

Hanifah Febriani

Universitas Muhammadiyah Surakarta, Indonesia
hfl85@ums.ac.id

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Corresponding Author:

ABSTRACT

Purpose: This research aims to (1) explore the local wisdom values of the Special Region of Yogyakarta (DIY), which can constitutionally strengthen human rights values in Indonesia, and (2) analyze the judge's consideration of the Constitutional Court Decision No. 88/PUU-XIV/2016 from the perspective of universalism versus particularism of human rights in Indonesia.

Methodology: This normative legal research employed a philosophical and statutory approach. This research used only secondary data consisting of primary and secondary legal materials refined through Focus Group Discussion. The data were then analyzed by descriptive qualitative philosophy to find the meaning behind the object under study through data reduction, classification, interpretation, display, and drawing conclusions.

Triwahyuningsih
triwahyuningsih@ppkn.uad.ac.id

Results: The study revealed that (1) constitutional human rights values in DIY's local wisdom are explicitly stated in the DIY Regional Regulations (*Perda*) and Special Regional Regulations (*Perdais*). DIY's local wisdom can philosophically strengthen human rights values in Indonesia based on Pancasila, confirming that Pancasila as a constitutional identity crystallizes cultural customs and religious values throughout Indonesia. (2) The judges' opinion for the Constitutional Court Decision No. 88/PUU-XIV/2016 is relative-particular; other than human rights is universal as there is no differentiation between the male and female to be the Governor of Yogyakarta Special Region, in the particular case of Yogyakarta, it remains upholding the local wisdom values as the requirement to be the Governor of Yogyakarta Special Region, where he shall be the reigning monarch of Sultan Hamengku Buwono, and the requirement to be the *Sultan* relies on the hereditary internal law of the *Kasultanan Ngayogyakarta Hadiningrat* (Yogyakarta Palace) since 1755.

Applications of the study: This study is applied (1) to maintain and preserve the local wisdom values of the Special Region of Yogyakarta (DIY) for the upholding of human rights in Indonesia as mandated by the 1945 Constitution and (2) to support the government's program in the 2019-2024 RANHAM so that every Indonesian's human rights receive perfect protection, in which the administrators of state power uphold human rights values in carrying out their duties to serve the community.

Novelty/Originality: This research explored the local wisdom values of the DIY which can strengthen human rights values in Indonesia from various existing regulations in DIY with a broader approach, including raising local wisdom from human rights enforcement cases in Indonesia.

Keywords: Constitutional Perspective, Human Rights, DIY's Local Wisdom, Constitutional Court Decision No. 88/PUU-XIV/2016

ABSTRAK

Tujuan: Penelitian ini bertujuan untuk (1) menggali nilai-nilai kearifan lokal Daerah Istimewa Yogyakarta (DIY) yang secara konstitusional dapat memperkuat nilai-nilai HAM di Indonesia dan (2) menganalisis pertimbangan hakim terhadap Putusan Mahkamah Konstitusi Nomor 88/PUU-XIV/2016 dari perspektif

universalisme versus partikularisme hak asasi manusia di Indonesia.

Metodologi: Penelitian hukum normatif ini menggunakan pendekatan filosofis dan perundang-undangan. Penelitian ini hanya menggunakan data sekunder yang terdiri dari bahan hukum primer dan sekunder yang disempurnakan melalui Focus Group Discussion. Data tersebut kemudian dianalisis dengan filosofi kualitatif deskriptif untuk menemukan makna dibalik objek yang diteliti melalui reduksi data, klasifikasi, interpretasi, penyajian, dan penarikan kesimpulan.

Temuan: Kajian menunjukkan bahwa (1) nilai-nilai konstitusional HAM dalam kearifan lokal DIY dinyatakan secara eksplisit dalam Peraturan Daerah (Perda) dan Peraturan Daerah Khusus (Perdais) DIY. Kearifan lokal DIY dapat memperkuat nilai-nilai hak asasi manusia di Indonesia secara filosofis berdasarkan Pancasila dan menegaskan bahwa Pancasila sebagai identitas konstitusional merupakan kristalisasi adat budaya dan nilai-nilai agama di seluruh nusantara. (2) Pendapat hakim terhadap Putusan Mahkamah Konstitusi Nomor 88/PUU-XIV/2016 bersifat relatif-khusus; selain hak asasi manusia bersifat universal karena tidak ada perbedaan antara laki-laki dan perempuan untuk menjadi Gubernur Daerah Istimewa Yogyakarta, khusus Yogyakarta, tetap menjunjung tinggi nilai-nilai kearifan lokal sebagai syarat untuk menjadi Gubernur Daerah Istimewa Yogyakarta, di mana beliau akan menjadi raja yang bertahta Sultan Hamengku Buwono dan syarat menjadi Sultan didasarkan pada hukum internal turun temurun dari Kasultanan Ngayogyakarta Hadiningrat (Istana Yogyakarta) sejak tahun 1755.

Kegunaan kajian: Penelitian ini diterapkan untuk (1) menjaga dan melestarikan nilai-nilai kearifan lokal Daerah Istimewa Yogyakarta (DIY) untuk penegakan hak asasi manusia di Indonesia sebagaimana diamanatkan oleh UUD 1945 dan (2) untuk mendukung program pemerintah dalam RANHAM 2019-2024 agar hak asasi manusia setiap orang di Indonesia mendapat perlindungan yang sempurna, di mana penyelenggara kekuasaan negara menjunjung tinggi nilai-nilai hak asasi manusia dalam menjalankan tugasnya melayani masyarakat.

Kebaruan/Orisinalitas: Penelitian ini menggali nilai-nilai kearifan lokal Daerah Istimewa Yogyakarta (DIY)

yang dapat memperkuat nilai-nilai HAM di Indonesia dari berbagai regulasi yang ada di DIY dengan pendekatan yang lebih luas, termasuk mengangkat kearifan lokal dari kasus-kasus penegakan HAM di Indonesia.

Kata Kunci: *Perspektif Konstitusi, Hak Asasi Manusia, Kearifan Lokal DIY, Putusan MK No. 88/PUU-XIV/2016*

INTRODUCTION

As quoted by Jimly Asshiddiqie, J.J. Rousseau asserted that the Constitution is constructed as the highest agreement, or even a social contract, for all the people for and within the state (Asshiddiqie, 2017). In this study, the Constitution in question is, in the narrow sense, a written constitution, usually called the Basic Law. The material content of the Constitution contains three pivotal things: (1) a guarantee of human rights and citizens; (2) a fundamental constitutional structure of a country; (3) division and limitations of fundamental state institutions (Huda, 2017). Human rights are one of the important contents of the Constitution because they prevent the arbitrariness of the authorities against the dignity of citizens.

Since human dignity and worth are so vital, everyone strives to maintain, protect, and risk anything; therefore, self-esteem and dignity are not trampled on or destroyed by others. Human rights continue to develop along with human civilization. Most recently, the Vienna Declaration (1993) reached a consensus between Western and non-Western countries that human rights are universal, and their implementation is adjusted to the peculiarities of each country (Matondang, 2008). In third-world countries, the local culture recognizes certain rights of its citizens through stories, legends, and metaphors, which sometimes require interpretation because of their unwritten nature (Budiardjo, 2009). This local culture is unique; it can be in the form of philosophical values believed to guide a wise human being, commonly called local wisdom.

This framework explains that local wisdom has different philosophical-theoretical reasons from adherents of Universal Human Rights. Discussions about universalism and cultural relativism in applying human rights continue today. Universalism claims that many “primitive” cultures in the future will have the same legal system and rights as Western cultures. Cultural relativism, on the other hand, asserts that traditional culture is difficult to modify (Triputra, 2017).

Additionally, each country has reasons for explaining the concept of human rights according to its cultural context. This argument views humans as products of a particular social environment, culture, tradition, and civilization (Triputra, 2017). Culture is one of the sources of legitimacy for rights or moral principles, so human rights must be understood in the cultural context of each country. In addition, human rights are contextual (Jaka Setiawan, 2013). Muhtaj believes that the difference in the concept of human rights enriches human rights discourse and studies from the West and the discourses from the East, as is generally the case in Asian countries. At an extreme level, there is an assumption to end human rights discourse because it comes from “them,” not “us” (Majda El Muhtaj, 2009).

From the Directorate General of Law and Human Rights, Hidayat explains that local wisdom is a nation’s cultural personality that causes it to absorb and even process culture from outside/other nations into its character and abilities (Hidayat, 2019). The government functions as a duty bearer for local wisdom. The state's obligation consists of three forms: respecting, protecting, and fulfilling. The obligation to respect is the state’s obligation to refrain from intervening, except under legitimate law (Hidayat, 2019). This description can be seen in Article 1 of Law No. 39 of 1999 on Human Rights, which states that human rights must be respected, upheld, and protected by the state, law, and government for the honor of every person and the protection of human dignity. Because human rights belong to humans by nature, they are noble and holy (Hasyim, 2020).

Mahfud MD, as stated by Anggoro, conveyed the importance of inviting the public to see that upholding human rights should not only be from a positive legal aspect, especially now that there has been a shift in human rights violations from vertical to horizontal (Anggoro, 2019). The true purpose of upholding human rights is to maintain the dignity of every human being so that they can live in prosperity, peace, tranquility, and justice (Konsiderans PERPRES No. 53 Tahun 2021 Tentang Rencana Aksi Nasional Hak Asasi Manusia Tahun 2021 - 2025, n.d.). However, in practice, there are often various forms of dynamics full of struggles to uphold them, be it the rejection of human rights or the application of human rights in Indonesia.

Various methods have been carried out by ancestors in the past or leaders in the present aimed at upholding human rights in Indonesia. Human rights in Indonesia originate from, among others, the Pancasila ideology; material values are extracted from Indonesian society, which is crystallized from religious values, customs, and culture (Putra, 2022). It indicates that

Indonesia already has local wisdom values to strengthen human rights in Indonesia, including from the Special Region of Yogyakarta. The logic is simple: Indonesian people can apply and realize human rights values if every community upholds local values and becomes a way of life (Putra, 2022).

The research from Febriansyah Ramadhan and Luthfi Marfungah concerning Constitutional Court Decision No. 88/PUU-XIV/2016 concludes that the position of women in the Yogyakarta Palace, where its local wisdom is attached to it and has been institutionalized, has customary (*adat*) and historical values different from international human rights norms (Ramadhan & Marfungah, 2020). Another study's result (Rizaldi & Ramadani, 2020) deduces that Pancasila is the identity of the Constitution, causing the Constitution to have an identity that is not the same between one country and another. In addition, research from Muhaimin (Muhaimin, 2021) infers that the position of human rights in maintaining local wisdom is the same as when the right as a human being to practice or express oneself in adhering to the religion and has been regulated in the Constitution of the Republic of Indonesia.

Furthermore, the Indonesian state recognizes society's plurality of historical, cultural, legal, and religious values as an archipelagic country. Therefore, as a form of the power of these human rights, the Balinese indigenous people, for example, have the right to protect their culture against external cultural blows, which gradually undermine the local Balinese cultural heritage. One of which is spatial planning in Bali Province, which maintains multiple boundaries, concepts, and aspects.

Compared to others, this research has similarities in raising local wisdom; the difference concerns the narrower area and scope. Previously, Yuli Asmara Triputra's research concluded that implementing global human rights values into a country's legal system cannot ignore the values of the society concerned (Triputra, 2017). Suharyono et al. suggested that the legal protection of human rights in obtaining land rights in Indonesia still has weaknesses. (Suharyono et. al., 2022). Research by Sabit Irfani et al. also inferred that the struggles of the victims' families, who were never tired, showed their longing related to the clarity of the state's commitment to resolving cases of human rights violations (Irfani, 2022). A study by Nur Afif Ardani et al. focused on how cultural relativism affects human rights. In addition, the theory of cultural relativism views human rights differently, limited to the area of residence and culture (Ardani, Amalia, & Hertanto, 2017).

This research also differs from studies conducted by Yuli Asmara Triputra (Triputra, 2017), Suharyono, Khalisah Hayatuddin, and Muhamad Sadi Is (Suharyono (et., al), 2022), Sabit Irfani (Irfani, 2022), and Ardan Nur Afif, Sulfi Amalia, and Rooseno (Ardani et al., 2017). The studies above have not taken the other side from a broader approach, including raising local wisdom from the Constitutional Court Decision No. 88/PUU-XIV/2016 perspective. For that reason, the urgency of this research is to maintain and preserve the local wisdom values of the Special Region of Yogyakarta (*Daerah Istimewa Yogyakarta*) hereinafter abbreviated as DIY for the upholding of human rights in Indonesia as mandated by the 1945 Constitution and support government programs in the 2019-2024 RANHAM so that every Indonesian's human rights receive perfect protection in which, in carrying out their duties, the administrators of state power serve the community by upholding human rights values. Besides, efforts to promote human rights continue to be enhanced by establishing good cooperation between government agencies and civil society (Langi, 2018).

This research discusses the main questions: (1) what are the local wisdom values of the DIY that can constitutionally strengthen human rights values in Indonesia? Moreover, (2) How is the judges' opinion on Constitutional Court Decision No. 88/PUU-XIV/2016? Therefore, this research aims to explore the local wisdom values of the DIY, which can strengthen the values of human rights in Indonesia from various existing regulations in DIY. Furthermore, this research also analyses the judges' opinion of the Constitutional Court Decision No. 88/PUU-XIV/2016 from the perspective of universalism versus particularism of human rights in Indonesia.

RESEARCH METHOD

The type of this research is normative legal research that places law as a system of norms (Marzuki, 2017), with a statutory and philosophical approach to finding the meaning behind the object under study. The research object concerned the constitutional perspective on human rights values in the local wisdom of the Special Region of Yogyakarta. Data collection used primary legal materials, and secondary legal materials were completed through FGD (Focus Group Discussion). Primary legal materials included the 1945 Constitution, Law No. 39 of 1999 concerning Human Rights and other related laws, DIY Regional Regulations, and Special Region Regulations of DIY. Meanwhile, secondary legal materials comprised legal references,

previous research results, and journal laws relating to the studied object. The analysis of qualitative descriptive data was then arranged in detail and systematically through data reduction, classification, interpretation, display, and drawing conclusions.

RESULTS AND DISCUSSION

Human Rights Values

In principle, according to Jack Donnelly, as quoted by A.D. Bakarbessy, human rights values are presented to perfect human life according to dignity (A.D. Bakarbessy, 2013). Beginning of the birth of human rights in England through the Magna Charter on June 15, 1215, no citizen could be deprived of their rights except for legal considerations. This teaching continues to roll. Thomas Aquino (1215-1274) and John Locke (1632-1704) propose that “Status Naturalist” humans have fundamental rights individually, and then in “Status Civilis,” the fundamental rights of every citizen must be protected by the state (Azhari, 2017). At the beginning of the 19th century, there was a reaction against the way of thinking of natural law theory to legal positivism. Afterward, the French philosopher Auguste Comte (1798-1857), as quoted by A.D. Bakarbessy, only recognized laws made by the state. John Austin also asserted that the law is an order from a sovereign authority in society, i.e., the government (A.D. Bakarbessy, 2013). Based on this thought, human rights principles can be used as a normative basis depending on the state’s willingness to regulate them in national law (A.D. Bakarbessy, 2013).

Specifically, Eastern culture is developed particularly in Asia, such as Indonesia, while Western culture is commonly developed in Europe and America, such as the United States, Germany, and England. Eastern cultures of views, including Indonesia, have a collective view of seeing the world and its people. Countries such as China, Vietnam, Myanmar, Malaysia, and Singapore, including Indonesia, fight for human rights values with an “Eastern” concept by criticizing “Western” human rights (Harold Crouch, n.d.). The same goes for Islamic countries. Universal human rights values are not imposed globally in the form of Western values, but universal recognition of pluralism and differences in religion, culture, political beliefs, and outlook on life as long as these differences aim to elevate human dignity (Heiner Bieleddt, 1995). In addition, a harmonious relationship exists, and mutual entry into one another can occur, but one does not displace the other. There are *non-derogable* rights, which cannot be reduced under any circumstances and can only be deviated if it is proportional to the threat

faced and is not discriminatory, i.e., for the sake of (i) maintaining national security or public order or public health or morality and (ii) respecting the rights or freedoms of others (Triputra, 2017).

In Indonesia, *non-derogable* rights are formulated in the 1945 Constitution of the Republic of Indonesia Article 28 I section (1), which reads, “Right to life, right not to be tortured, right to freedom of thought and conscience, right to religion, right not to be enslaved, right to be recognized as a person before the law and the right not to be prosecuted based on a retroactive law are human rights that cannot be reduced under any circumstances.” On the other hand, there are *derogable* rights whose fulfillment may be reduced or restricted by state parties. This type includes a.) the right to freedom of opinion or expression, including the freedom to seek, receive, and impart information and all kinds of ideas without regard to frontiers (either orally or in writing); b.) the right to freedom of peaceful assembly; c.) the right to freedom of association, including forming and becoming a member of a trade union (Triputra, 2017).

The characteristics of human rights are natural, essential, and universal (Riyadii, 2018). Their existence is interrelated and cannot be divided, represented, transferred, or segregated. Its existence is whole and round (Caesar Isabela, n.d.). Muladi then details four views on human rights. First, absolute-universal human rights are seen as universal values as formulated in the International Bill of Human Rights. The second is relative-universal. The issue of human rights is a universal problem; however, exceptions based on international law principles are still recognized (Article 29, section (2) of the Universal Declaration of Human Rights). Third, absolute-particularistic sees human rights as a problem for each nation without giving strong reasons, especially in rejecting the entry into force of international documents. This view is chauvinistic, selfish, defensive, and passive about human rights. The fourth is relative-particularistic that views human rights and universal issues as national problems for each nation. The validity of international documents must be aligned, harmonized, and balanced, gain support, and be embedded in the nation’s culture. This view is defensive and actively seeks to formulate and justify the characteristics of the human rights it adheres (Muladi, 1996).

In facing this difference in particular universalism, several countries reconceptualize human rights by including the diversity of local concepts in a more general and universal context. In the ASEAN region, for example, in 1984, a statement was declared (Bangkok declaration) regarding “Basic obligations for the people and governments of ASEAN countries”

(WignjoSoebroto, 2013). Therefore, the Bangkok Declaration emphasizes the importance of historical, cultural, and religious backgrounds in understanding and implementing human rights (Harold Crouch, n.d.).

The concept of universalism holds that all human beings are entitled to human rights, regardless of status. This concept gets opposition, particularly from religious and cultural views, until the idea of relativism emerges. According to the teachings of relativism, all points of view are considered correct, and the truth is relatively dependent on the cultural identity attached to society. In addition, each culture is valued as having a unique identity. In this view, outside views are not superior when dealing with local wisdom. However, this view does not justify cultures that can harm others physically or mentally. Even though it is considered culturally right, a father may not kill or injure his daughter who refuses a marriage proposal from the man her father has chosen (Elisabeth Reichert, 2006). In the Islamic view, for example, every Muslim must look after one another for the good of the people. Every individual also still has to submit to his obligations as a society. Such a view is very different from the concept of individualism in Western universalism (Hogemann & Raquel, 2020).

In human rights law, rights holders are individuals, while duty bearers are the state. The state has three generic obligations related to human rights: to respect, protect, and fulfill. On the other hand, individuals are bound by the obligation not to interfere with the human rights of other individuals (Situmorang, 2019). In addition, the theory of cultural relativity holds that humans are products of the socio-cultural environment. Differences in cultural traditions among people cause differences in thoughts and perceptions about humans, including human rights (Donnelly, 1985). Human rights exist to humanize human beings in essence so that in its implementation, it contains the ethical concept of human rights, i.e., ethics or procedures for behaving, procedures for speaking, and procedures for respecting the property of others. Human rights are inseparable from all life surrounding them, politically, economically, socially, culturally, and in defense and security (Sudi, 2016). Human rights also have their social character and social structure (Rahardjo, 2004).

Knut Asplund (2009) identifies several things that make the concept of human rights difficult for various groups of people in Indonesia to accept, such as: 1) cultural barriers (differences in the concept of power and political rules) and 2) different concepts of law and rights associated with certain religious beliefs like Islam. In addition, human rights are treated the same as other foreign ideologies, such as liberalism or Marxism, which are considered

harmful to the people's belief system. Human rights are also understood as something secular, deemed to replace the position of religion, as an alternative to Pancasila, or more precisely, human rights can replace Islam as a lens in reading Pancasila (Asplund, 2009).

Constitutional Perspective of Human Rights in Indonesia

As a Constitutional State, Indonesia implies that all aspects of state life are governed by law, including arrangements regarding human rights. The regulation of human rights in the 1945 Constitution, as the highest legal norm, becomes the reference for human rights regulation below the Constitution. The existence of Pancasila in the Preamble of the 1945 Constitution is the identity of the Constitution. Constitutional identity is obtained from the experiences passed on in the lives of the nation and state (Rizaldi & Ramadani, 2020). It suggests that all legal products are philosophically based on Pancasila values, originating from customary values, culture, and local wisdom throughout Indonesia. Within Pancasila are the values of the Indonesian nation itself, which have existed since ancient times before the State of Indonesia was established in terms of customs, culture, and religious values (Kaelan, 2017). In formulating Pancasila, the Nation's Founders thought and felt what their nation experienced during the colonial period and remembered what they had fought for and dreamed of as a source of liberation, happiness, and shared identity (Latif, 2012).

The Constitution of the Republic of Indonesia is the understanding included and contained in the entire reference system of Pancasila and the 1945 Constitution as an integral and inseparable constitutional system. The text of the 1945 Constitution is only its form or body, while Pancasila and the values contained in the Preamble to the 1945 Constitution and the fundamental values that live in society as a constitutional culture are, in practice, the spirit or soul of the nation (Asshiddiqie, 2017).

Each of the Pancasila precepts contains the meaning of the integrity of human nature. As described by Latif (2019), "Private and community moral sources (religion, local wisdom, and others) can fill in and support the formulation of Pancasila as public morality. On the other hand, although Pancasila does not intend to interfere in developing private and community morals, it can wisely prevent the development of private and community morals, which can endanger public life. Each Pancasila precept reflects a perspective from the integrity of the natural integrity of humanity" (Latif, 2019).

As a philosophy, the understanding of Pancasila starts from the nature of humans as individuals and social beings. The concept of human rights in Pancasila is based on individual freedom and maintains social obligations in society. Freedom in Pancasila is the balance between rights and obligations between humans as individuals and society, humans as independent beings and God's creatures, and the balance of body and soul (Wilujeng, 2018).

In principle, there are five elements of human nature that are interrelated with each other, perfecting each other: (1) There is something that creates human existence; (2) It takes living together to love one another; (3) By nature, humans as individual and social beings need to live together in diversity; (4) Through love and mutual respect, respect for one another is the way to make decisions by deliberation; (5) Human needs physically and spiritually are attached to human existence, and loving one another towards a prosperous life, both physically and mentally, is the end of all human life" (Latif, 2019).

At the state level, in Indonesia, there has been a difference of opinion at the Body for Investigation of Preparatory Efforts for Indonesian Independence (*Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan*) hereinafter abbreviated as BPUPKI session in the discussion on the Draft Constitution between Moh Hatta and M. Yamin who wanted human rights to be included in the Constitution with Soepomo and Seokarno who rejected the inclusion of human rights in the Constitution because it is a product of Western individualism. Finally, it was agreed that human rights should be included in the 1945 Constitution ("Hak Asasi Manusia," n.d.).

After the 1945 Constitutional Amendment, the Indonesian State's commitment is to improve human rights elements explicitly, i.e., the right to life (Article 28 A), the right to have a family and continue offspring and children's rights (Article 28 B), right to self-development (Article 28 C), the right to protection and legal certainty, work and compensation (Article 28 D), freedom of religion, association and assembly, expression (Article 28 E), the right to communicate and obtain information (Article 28F), receive personal, family, honor, and dignity protection (Article 28 G), the right to live in physical and spiritual prosperity (Article 28 H), human rights cannot be reduced under any circumstances (Article 28 I), and everyone is obliged to respect the human rights of others (Article 28 J). On the other hand, Law No. 39 of 1999 on Human Rights includes the following rights: the right to live; the right to have a family and continue offspring; the right to self-development; the right to obtain justice; the right to personal

freedom; the right to feel safe; the right to welfare; the right to participate in government; women's rights; child rights (Law No. 39 of 1999 on Human Rights).

Local Wisdom in the Special Region of Yogyakarta

Local wisdom in this study relies on a philosophy of values, ethics, and institutionalized ways of behaving that are traditionally considered good and right so that they can last for a long time (Sartini, n.d.). A person is considered wise if he can accumulate and collaborate on the values that surround him (Stemberg, Robert J, 2004). Local wisdom is also a distinctive cultural expression that contains native local values regarding a society's values, ethics, norms, rules, and skills, which are the guidelines for daily life. In general, local wisdom can be in the form of customs, institutions, wise words, proverbs, and in Javanese society, it can be in the form of a poem (*pari'an*), proverb (*paribasan*), idiom (*bebasan*), and metaphor (*saloka*) (Suswandari, 2017).

Local wisdom is also all forms of wisdom based on good values believed, applied, and continuously maintained for quite a long time (from generation to generation) by a group of people in a certain environment or area where they live. Etymologically, local wisdom consists of two words, "local" and "wisdom." Other names for local wisdom include local policy, local knowledge, and local genius (Njatrijani, 2018).

Moreover, local wisdom is valuable and benefits people's lives. The system was developed because of the need to live, maintain, and continue life following the situation, conditions, abilities, and values of the community concerned. This local wisdom is then used as part of their wise way of life to sustainably solve all life's problems (Njatrijani, 2018). Local wisdom grows in the local community, is maintained and passed on from generation to generation, and can strengthen if the values adopted and implemented align with community development efforts (Pratama, 2020).

The local wisdom of the DIY is so prominent because it has received recognition from the state as a Special Province. This recognition is explicitly stated in Law No. 13 of 2012 on the Privileges of DIY. The specialties of Yogyakarta include five aspects: procedures for filling the positions, ranks, duties, and powers of the Governor and Deputy Governor; Yogyakarta regional government institutions, culture, land, and space. Regarding the culture, it derives from the noble values of the Islamic Mataram Kingdom and noble Javanese philosophical values.

The local wisdom values are essential, as they can be the local genius as one of the main guidelines in dealing with globalism hegemony. Besides, the theory of cultural relativity holds that humans are products of the socio-cultural environment. Differences in cultural traditions among people also cause different thoughts and perceptions about humans, including human rights (Donnelly, 1985).

Human Rights Values in the Local Wisdom of the Special Region of Yogyakarta

a. Humanity Value

Respecting a person's human rights means respecting their rights to enjoy and maintain a humane life, such as living and being free from oppression, harassment, and torture (L. Tanya, Yosep Parera, & F. Lena, 2018). For the right to life, Article 28 A of the 1945 Constitution states, "Every person has the right to live and has the right to defend his life and livelihood." Then, Article 9 of Law No. 39 of 1999 mentions the right to life: a. Everyone has the right to live, maintain life, and improve their standard of living, b. Everyone has the right to peace, security, happiness, physical and spiritual prosperity, and c. Everyone has the right to a good and healthy environment. Further, prohibited from killing (*mateni*) is a value that is a *non-derogable* right that no one can reduce (Triputra, 2017).

The local wisdom of DIY prohibits doing reprehensible things with the five "M" (*malima*): *mateni* (killing), *maling* (stealing), *main* (gambling), *madon* (adultery), and *madat; mendem; mabuk* (smoking opium or any drug and drinking alcoholic beverages that can result in self-forgetfulness) (Perda DIY No. 4 Tahun 2011 Tentang Tata Nilai Budaya Yogyakarta, 2011). The primary purpose of the prohibition is to purify oneself and remain rightly near to God, according to the teachings of their respective religions (Perda DIY No. 4 Tahun 2011 Tentang Tata Nilai Budaya Yogyakarta, 2011). In God's eyes, all people are equal; people are given rights that no one can take away, such as the right to live, be free, and pursue happiness. The International Covenant on Civil and Political Rights (ICCPR) 1966 states that the right to life is an inherent legal right because of its nature and is protected by law. The right to life is of the most basic value because if there is no right to life, there will be no issues with other human rights (Achjani Zulfa, 2015).

b. Freedom Value

The form of expression that humans are born equal gives birth to human rights values of freedom or independence for everyone, such as freedom of religion, association, and assembly

to express opinions. In Articles 28 E and 29 of the 1945 Constitution and Articles 12 and 22 of Law No. 39 of 1999, it is stated that every person is free to embrace religion and worship according to his religion, improve the quality of life to become human beings who believe, have piety, are responsible, and have a noble character, and the state guarantees the freedom of everyone to embrace their religion and worship according to their religion and belief. In addition, *amemangun karyenak tyasing sasama* means that everyone must be tolerant, respect each other, and be able to take care of other people's feelings, even though their beliefs differ. Also, *ora golek benere dhewe* means that no one has the right to feel the most pious before God because of the worship one performs, but the degree of a person's piety is more judged by real behavior in everyday life (Perda DIY No. 4 Tahun 2011 Tentang Tata Nilai Budaya Yogyakarta, 2011).

In human rights, the state is the main legal subject because it is the main entity responsible for protecting, upholding, and promoting human rights. In human rights law, right holders are individuals, while duty bearers are the state. The state has three generic obligations related to human rights: the obligation to respect, protect, and fulfill. On the other hand, individuals are bound by the obligation not to interfere with the human rights of other individuals (Situmorang, 2019).

Article 28E section (1) and (2) of the 1945 Constitution of the Republic of Indonesia is the constitutional recognition of the right to freedom of religion and belief for anyone. Meanwhile, Article 29 of the 1945 Constitution of the Republic of Indonesia affirms the state's role to ensure that each citizen is free to embrace the religion and beliefs he adheres to. As quoted by Kristian Erdianto, according to Saldi Isra during the recitation of the judge's verdict of the judicial review of Article 61, section (1) and (2), and Article 64, section (1) and (5), of Law No. 23 of 2006 on Population Administration in conjunction with Law 24 of 2013 on Amendments to Law Number 23 of 2006 on Population Administration, it is mentioned that "The basic right to adhere to a religion, including the right to adhere to the belief in God Almighty, is part of human rights in the civil and political rights group. The Constitutional Court emphasized that the right to adhere to a religion or belief in God Almighty is a constitutional right of citizens, not a gift from the state" (Erdianto, 2017).

The concept of freedom of religion as a human right must be widely understood by considering the human rights of the social environment. The term ‘right’ is used in politics and philosophy in many different senses that have been tried to dissent from elsewhere. To sensibly ask whether individuals have a right to liberty in the neutral sense, they must fix on one meaning of ‘right’. The meaning of human rights is important; hence, clear enforcement (Dworkin, 1999). Dworkin intends to provide an explanation of human rights based on the desire to uphold human rights themselves. If there is a clear meaning regarding human rights, violations against them can be well known (Amsari, 2010).

In DIY, freedom of association, assembly, and opinion expression has been taught for generations. The local wisdom are stated in DIY Regional Regulation No. 4 of 2011, “*Bebrayan agung; sih kinasihan asih ing sesami*: society is like a family that must love each other to create harmony together; *rukun agawé santosa, crah agawé bubrah*: harmony will create happiness, and conflict will result in destruction; *Ana rembug ya dirembug*: If problems arise between the community members, they are discussed in a family manner; *kriwikan dadi grojogan*: if there is a dispute, there is no need to exaggerate; *Ngluruk tanpa bala, menang tanpa ngasorake*: disputes are resolved in humility, without belittling the other party (Penjelasan Perda No. 4 Tahun 2011, n.d.).

At the national level, various countries with pluralism in human rights thinking try to make acceptable human rights formulations and become the consensus of various parties. Like Indonesia, laws and regulations regarding human rights, such as Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts, seem to try to accommodate various developing human rights ideas, both those sourced from international law and from religious and cultural traditions that live in Indonesia (Matondang, 2008).

c. Equality, Justice, and Happiness Values

The right to be happy and prosperous under human rights (Article 28 H of the 1945 Constitution) is to live in a society and state order that is peaceful, safe, and secure, respects, protects and fully implements human rights. These rights will be fulfilled if every citizen gets a healthy living environment, gets plenary health services, has the right to equal treatment before the law and obtains justice, gets good social security, and has personal rights that cannot be taken over arbitrarily forced by anyone (Articles 12 and 35 of Law No. 39 of 1999). Also,

“*sama dèn arah raharjané*” means the willingness to make others happy, and “*rahayuning manungsa dumadi karana kamanungsané*” denotes that prosperity will be realized if human values are maintained. This local wisdom strengthens human rights values in Article 28 H of the 1945 Constitution and Articles 12 and 35 of Law No. 39 of 1999. Everyone has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law (Article 28 D of the 1945 Constitution). Also, everyone has the right to be free from discriminatory treatment and is entitled to protection against such discriminatory treatment (Article 28 I of the 1945 Constitution). Everyone, without discrimination, has the right to obtain justice (Article 17 of Law No. 39 of 1999).

This article's meaning aligns with DIY's local wisdom that a leader must be “*Mahambeg Mring Samirono*” (imitating the nature of the wind). A leader must be anywhere/knows no place, and be fair to anyone. A leader must be in all strata/layers of society, fair, and never discriminate. Particularly in the legal field, Law Number 16 of 2011 concerning Legal Aid aims to guarantee the rights of citizens, especially for people or groups who cannot afford access to justice and equality before the law which often experience difficulties (Abdillah, 2022). Ironically, not many people know about the existence of this legal aid, and there is a view that the legal process is expensive. When their rights are taken away, they cannot fight for their rights; people who cannot afford it will definitely be in trouble and eventually surrender (Adhayanto, 2022).

The right to a sense of security is outlined in Articles 29 and 31 of Law No. 39 of 1999, stating that a. Everyone has the right to protection of self, family, honor, dignity, and property rights; b. “Step on or enter a yard of residence or a house contrary to the will of the person who lives there is only permitted in cases stipulated by law.” The meaning of this article is consistent with DIY's local wisdom: *Sedumuk bathuk senyari bumi; dilabuhi pecahing jaja wutahing ludira*, meaning persistence in maintaining the motherland's dignity and fighting for the dignity of women and the land of residence—spilled blood to the last drop of blood (Prasodjo, 2023).

d. Value of Respecting the Human Rights of Others

Everyone is obliged to respect the human rights of others in the orderly life of society, nation, and state (Article 28 J of the 1945 Constitution). The meaning of this article aligns with some DIY's local wisdom: *bebrayan agung; sih kinasihan asih ing sesame*: society is like a

family that must love each other to create harmony together; *rukun agawé santosa, crah agawé bubrah*: harmony will create happiness, and conflict will result in destruction; *ana rembug ya dirembug*: if problems arise between the community members, they are discussed in a family manner; *kriwikan dadi grojogan*: if there is a dispute, there is no need to exaggerate; *ngluruk tanpa bala, menang tanpa ngasorake*: disputes are resolved in humility, without belittling the other party (Penjelasan Perda No. 4 Tahun 2011, n.d.).

Also, there are local wisdom of *pambegané alus; landhep tanpa natoni*: speaking mildly and softly that does not hurt others; *tingkah una-uniné prasaja*: the actions and speech are modest; *saujaré manis trus ati*: every word said is mild because it is based on a clean conscience; *kèh tepané mring saguning urip*: being tolerant and compassionate towards all living beings; *sama dèn arah raharjané*: willingness to make others happy; *rahayuning manungsa dumadi karana kamanungsané*: prosperity will be realized if human values are maintained (Penjelasan Perda No. 4 Tahun 2011, n.d.).

e. *The Value of Protection and Enforcement of the Fulfillment of Human Rights*

Government responsibility in Article 28 I of the 1945 Constitution and Article 8 of Law No. 39 of 1999 corroborate with the DIY's local wisdom as follows: *darmaning satriya mahanani rahayuning nagara*: the leader must devote himself to the state and the people because the true *dharma* filial piety will ensure the welfare and safety of the state and its people; *Mahambeg Mring Condro*: the government must be able to protect and calm its people, and its decisions are firm and do not create potential for conflict; *Mahambeg Mring Dahono*: the government must act towards good, fight evil, and provide protection to its people (Perdais DIY No. 3 Tahun 2017 Tentang Pemeliharaan Dan Pengembangan Kebudayaan, 2017).

The government must also do *hamengku, hamangku* dan *berbudi bawa leksana*: (1) Embracing, loving, and protecting all people (*hamengku*) without discriminating against ethnicity, tribe, race, class, and religion they embrace, so all people feel peaceful (*ayom ayem*); (2) Leader must try hard so that the people can enjoy a decent life (*hamangku*); therefore, a leader must be generous and keep promises (*bèr budi bawa leksana*); *Semangat (hamemayu hayuning bawana*: embodying the spirit of achieving noble ideals, namely protecting the truth, goodness, beauty, and sustainability of the world (Ni'matul Huda, 2013). *Hamangku, Hamengku* and *Hamengkoni*. *Hamengku* is consistent with *Hambeg Adil Paramarta*, i.e., *hangrengkuh* "hangemong," protects and nurtures fairly, regardless of class, belief, and

religion. *Hamangku* is in line with *Berbudi Bawa Leksana*, namely encouraging the heart by giving more than receiving. *Hamengkoni* aligns with *suri tauladan* (being an example) and stands at the forefront to take responsibility for all the risks; it is the meaning contained in *Gung Binathara's* character (Pradani & Anggara, 2015). These values will be able to provide protection and fulfill the human rights of the people he leads.

Judges' Consideration in the Constitutional Court Decision No. 88/PUU-XIV/2016

The Constitutional Court granted the judicial review of Article 18 section (1) point m of Law No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta, which reads, "Candidates for Governor and Candidates for Deputy Governor are citizens of the Republic of Indonesia who must meet the requirements to submit a curriculum vitae, including among others, educational history, work, siblings of his wife, and children." Based on the consideration of the Constitutional Court, this phrase creates legal uncertainty. It is because the requirements to become Candidates for Governor and Deputy Governor are cumulative, meaning that all the requirements in Article 18 mentioned above must be fulfilled (Constitutional Court Decision No. 88/PUU-XIV/2016, 2017).

Several reasons underlie the Constitutional Court granted the judicial review of Law No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta, as summarized from the Constitutional Court Decision No. 88/PUU-XIV/2016. *The first* is normative reasons. Article 18B section (1) of the 1945 Constitution of the Republic of Indonesia affirms that the state confirms recognizing and respecting particular or special government units regulated by law. *Second*, for historical reasons, the status of "*special region*" was given to the *Kasultanan Ngayogyakarta Hadiningrat*, which is now called the Special Region of Yogyakarta, because of the role and contribution of the *Kasultanan Ngayogyakarta Hadiningrat* in defending, filling, and maintaining the integrity of the Unitary State of the Republic of Indonesia. *Third*, Yogyakarta is special; the Sultan who reigns in the *Kasultanan Ngayogyakarta Hadiningrat* is not "a gift" or formed by the state (*in the case* of the Unitary State of the Republic of Indonesia). On the contrary, it was precisely because of the voluntary actions of the *Sultan* who reigned at that time who declared that the Special Region of Yogyakarta became an integral part of the Unitary State of the Republic of Indonesia (Constitutional Court Decision No. 88/PUU-XIV/2016, 2017).

Fourth, Indonesian (national) laws cannot interfere with the Sovereignty of the Palace. Historically and juridically, the *Kasultanan Ngayogyakarta Hadiningrat* existed before the independence of the Unitary State of the Republic of Indonesia. Therefore, the applicable laws in determining who is entitled to be crowned as *Sultan* in the *Kasultanan Ngayogyakarta Hadiningrat* are the law applied in the internal palace of the *Kasultanan*. “The state (which is represented by the law *in the case of* the Law of the Specialty of Yogyakarta) does not have a logical and historical constitutional argumentation basis to participate in determining who has the right to be crowned as the *Sultan* who reigns in the *Kasultanan Ngayogyakarta Hadiningrat*. *Fifth*, Law No. 13 of 2012 is discriminatory. The discrimination contradicts the 1945 Constitution and international law (among other things, the legal considerations of Constitutional Court Decision No. 028-029/PUU-IV/2006) (Constitutional Court Decision No. 88/PUU-XIV/2016, 2017).

Judges of the Constitutional Court argued about discrimination that Article 28I section (2) of the 1945 Constitution states, “Every person has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment.” Then, Article 1 point 3 of Law Number 39 of 1999 concerning Human Rights states, “Discrimination is any limitation, harassment, or exclusion directly or indirectly based on human differentiation based on religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, and political beliefs, which result in reduction, deviation, or elimination of the recognition, implementation, or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural, and other aspects of life.” Therefore, legally and constitutionally, discrimination is prohibited in Indonesia (Constitutional Court Decision No. 88/PUU-XIV/2016, 2017).

“Indonesia, as part of the international community, has ratified various international legal instruments that prohibit discrimination, one of which is the International Covenant on Civil and Political Rights (ICCPR), which has been ratified through Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights. Article 2 section (1) of ICCPR states, “Each state party to the present Covenant undertake to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or status.” The ICCPR specifically considers it necessary to emphasize equality between men, as Article 3 of the ICCPR states, “The states parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights outlined in the present Covenant (Constitutional Court Decision No. 88/PUU-XIV/2016, 2017).

Concerning the prohibition of discrimination against women, Indonesia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through Law Number 7 of 1984 on Ratification of the Convention regarding the Elimination of All Forms of Discrimination against Women (Indonesian Law No. 7 of 1984). Articles 1–3 of CEDAW affirm that “discrimination against women” is any distinction, exclusion, or restriction based on gender. Article 2 CEDAW states the obligation to comply with it and take all necessary steps or efforts in all fields, especially in the political, social, economic, and cultural fields, including steps through legislation, to ensure the full development and advancement of women (CEDAW, Art. 2). Then, Article 3 of CEDAW states, “States parties shall take in all fields, in particular in the political, social, economic, and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women to guarantee them the exercise and enjoyment of human rights and fundamental freedoms based on equality with men.” The aim is to guarantee them the implementation and enjoyment of human rights and fundamental freedoms based on equality with men (Constitutional Court Decision No. 88/PUU-XIV/2016, 2017).

The judge’s opinion on Constitutional Court Decision No. 88/PUU-XIV/2016 associated with the Universal and particular discourse on human rights is particularistic-relative; apart from universal issues, human rights issues are national issues for each nation. The validity of international documents is harmonized and balanced with the culture of each nation. The proof of it is the issuance of a decision that granted the judicial review of Law No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta, Article 18 section (1) point m on the Value of Equality, stating that the position of men and women is equal and that they can become the Governor of Yogyakarta Special Region, as guaranteed in the 1945 Constitution Article 28 I section (2), Article 1 point 3 of Law Number 39 of 1999, Constitutional Court Decision No. 028-029/PUU-IV/2006, Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, and Law Number 7 of 1984 on Ratification of the Convention regarding the Elimination of All Forms of Discrimination Against Women.

Article 18 section (1) point m of the Privileges of the Special Region of Yogyakarta, therefore, is deemed to have discriminated against the positions of women and men. Through a judicial review mechanism, this article was annulled based on Constitutional Court Decision Number 88/PUU-XIV/2016 and became a gateway for women's entry into the provincial

government of the Special Region of Yogyakarta and provided legal certainty (Sianipar, 2021). In the judges' consideration, the state intervenes in producing a decision. It is evidenced by the judges' analysis of women, using the lens of national and international law related to gender (Sumantri, 2020).

On the other hand, the Constitutional Court judges considered the Yogyakarta local wisdom values as particular human rights. As a special region, those who can become the Governor of Yogyakarta Special Region are enthroned as *Sultan Hamengku Buwono* for the Governor Candidates and enthroned as *Adipati Paku Alam* for Deputy Governor Candidates; the nation's cultural heritage has been passed down from generation to generation in the *Kasultanan Ngayogyakarta Hadiningrat* with the title *Ngarsa Dalem Sampeyan Dalem Inkgang Sinuwun Kanjeng Sultan Hamengku Buwono Senapati Ing Ngalaga Ngabdurrakhman Sayidin Panatagama Kalifatullah*. Therefore, the state (which is represented by the law *in the case* of the Privileges of the Special Region of Yogyakarta) does not have a logical and historical constitutional argumentation basis to participate in determining who has the right to be crowned as the *Sultan* who reigns in the *Kasultanan Ngayogyakarta Hadiningrat*. Indonesian law cannot interfere with the Sovereignty of the Palace, which already has its rules on determining the Sultan to be crowned (Constitutional Court Decision No. 88/PUU-XIV/2016, 2017). Human rights, in particular, are recognized in Article 18 B section (1) of the 1945 Constitution of the Republic of Indonesia, stating, "The state recognizes a particular or special administrative unit regulated by law."

CONCLUSION

The study indicates that the values of human rights in Yogyakarta's local wisdom are explicitly stated in Regional Regulation No. 4 of 2011 on Cultural Values of the Special Region of Yogyakarta and Special Regional Regulation No. 3 of 2017 on the Development and Maintenance of Culture. They include (a) the value of humanity; (b) the value of freedom; (c) the value of equality, justice, and happiness; (d) the value of respect for human rights; and (e) the protection and enforcement of human rights fulfillment. Moreover, Yogyakarta's local wisdom supports the human rights values in Indonesia as stated in the 1945 Constitution, as the values are mostly derived from the crystallization of Indonesia's culture. The prominent local wisdom of Yogyakarta is the legacy of the novel values of the Islamic Mataram Kingdom and the noble Javanese philosophical values.

Judges' consideration in the Constitutional Court Decision No. 88/PUU-XIV/2016 associated with the universal and particular discourse on human rights is particularistic-relative; human rights is an issue of both universal and national issues for each nation. The Constitutional Court's decision granted the judicial review of Law No. 13 of 2012 concerning Privileges of Special Region of Yogyakarta, Article 18 section (1) point m, regarding the value of equality, stating that the position of men and women is the same as being able to become Governor of Yogyakarta Special Region as guaranteed in the 1945 Constitution Article 28 I section (2), Article 1 point 3 Law Number 39 of 1999, Constitutional Court Decision No. 028-029/PUU-IV/2006, Law Number 12 of 2005 (ratification of the ICCPR), and Law No. 7 of 1984 (ratification of CEDAW). On the other hand, the values of local wisdom as human rights, in particular, are acknowledged regarding the requirements of the Governor of Yogyakarta Special Region, namely *Sultan Hamengku Buwono*, who has been reigned for generations since 1755 until now from the *Kasultanan Ngayogyakarta Hadiningrat*. The full requirements for who is enthroned as *Sultan Hamengku Buwono* are based on the internal law of the *Kasultanan Ngayogyakarta Hadiningrat*.

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