

Chapter 23

Culture, ideology and human rights: The case of Indonesia's Code of Criminal Procedure

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The question of culture is prominent in current human rights literature, largely because of the challenges and contradictions of cultural relativism. Extreme cultural relativists argue that 'rights' only exist when particular societies perceive them as such. As cultural constructs, they lack any autonomous existence and therefore cannot be said to be universal (Pollis and Schwab, 1979). This view, uncomfortably suggestive of an absolute inability to explain or understand other cultures, lacks many proponents (Schirmer, 1988: 93) – although it does give succour to the 'Asian values' argument that restriction of civil and political liberties in Asia is justified by a distinct regional view of human rights. Yet, few also would argue the opposite view: that Western human rights law and legal institutions may be applied *mutatis mutandis* to Asian societies. After all, the history of post-colonial law reveals clearly that transplanted law and institutions rarely operate with similar effects in their new environment (Seidman and Seidman, 1994: 44-45; see also, Butt Ch 28, this volume). Thus, the orthodox formulation is that international human rights norms must be infused with contextual and cultural specificity (Pritchard, 1996: 153-154, 166-168). But how is this to be done? What is the middle way between universalism and cultural relativism?

Western lawyers tend now to accept that cultural factors may validly produce different human rights outcomes, but argue that culture cannot be a 'metanorm': cultural practices that conflict with international standards must be condemned (Alston, 1994: 20; Falk, 1992: 46-52). Alston (1994: 19-20) argues further that international human rights standards are best seen as concentric circles: central norms that relate to the physical and mental integrity of the person are less responsive or susceptible to cultural influences than more peripheral norms such as treatment of detainees and freedom of thought. In contrast, a prominent Muslim writer, An-Na'im, asserts that culture must play a more dynamic role than mere subordinate normative influence. An-Na'im argues that a major cause of human rights violations in the Third World is the lack of local cultural legitimacy of international human rights standards and institutions (1992: 1-5). If human rights instruments are to be truly universal, they must be based on genuine cross-cultural normative consensus rather than the views and values of a dominant culture. This quest for consensus requires intense intra- and inter-cultural dialogue, which may ultimately result in a need to modify international human rights standards (An-Na'im, 1994: 62-69).

Text

effect institutional change; but must evolve first in substance and effectiveness from political, social and ideological change. It is in change of this kind, not questions of culture or application of western-style law, that the greatest prospects of improving human rights in Indonesia may be found.

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