

Good Ethnic Minority Justice: The Need for Good Governance by Ethnic Minority Group

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Abstract

Good ethnic minority justice is a notion which stipulates equal treatment for all people, including ethnic minorities, regardless of their ethnic, religious, or cultural background. This paper will discuss the vital demand for the implementation of good governance in providing justice to ethnic minorities. Good governance, at least, comprises of the principle of transparency, the principle of participation and the principle of human rights. Furthermore, this paper will focus on theoretical and philosophical analyses towards the need for good ethnic minority justice. Some examples are mentioned from the situation of legal protection of ethnic minorities in Indonesia and the Netherlands. Meanwhile, philosophical discourses emphasize good ethnic minority justice which is the opposite of the dominant theory of justice. The theory of justice mostly supports the position of the majority. Good ethnic minority justice highlights the legal protection of ethnic minorities.

Keywords: Ethnic Minority, good governance, transparency, participation, and human rights

Konsep keadilan yang baik untuk etnis minoritas adalah sebuah pemikiran yang mendorong adanya persamaan hak untuk semua masyarakat termasuk etnis minoritas, tanpa memperhatikan latar belakang etnis mereka, agama, dan kebudayaan. Makalah ini akan mendiskusikan kebutuhan untuk melaksanakan ide pemerintahan yang baik, yang diharapkan mampu mempersembahkan keadilan bagi etnis minoritas. Paling tidak pemerintahan yang baik terbagi ke dalam prinsip transparansi, partisipasi, dan hak asasi manusia. Selanjutnya, makalah ini akan mendiskusikan secara konseptual prinsip-prinsip ini. Beberapa contoh akan disebutkan kasus dan regulasi tentang etnis minoritas di Indonesia dan Belanda. Konsep keadilan yang baik untuk etnis minoritas mengedepankan perlindungan hukum bagi etnis minoritas.

Katakunci: Etnis Minoritas, Pemerintahan yang Baik, Transparansi, Partisipasi dan Hak Asasi Manusia.

Introduction

This paper discusses the need for good governance by ethnic minorities. Generally speaking, ethnic minorities want to have better access to public information, and want their human rights to be protected. Good governance contains the implementation of the principle of transparency, participation and human rights. The idea

of good governance requires the government bodies to provide good public services for all people. Sometimes, ethnic minorities face problems of discrimination, maladministration, stereotyping, prejudice, and are oppressed by the position of the majority.

Besides explaining the weak position of minorities, especially ethnic minorities facing government bodies and the majority, this paper tries to clarify the demand for good governance. The last part of this paper describes philosophical thought on good ethnic minority justice. Furthermore, this paper applies the state of art, namely: the idea of good ethnic minority justice is established from the implementation of the principles of transparency, participation and human rights in legal practice. Furthermore, in order to have a comprehensive description, this paper briefly discusses the conditions in Indonesia and the Netherlands. However, the example of Indonesia and the Netherlands is not the main focus of this paper. The example only needs to narrate the theoretical and philosophical discourse on the concept of good governance and ethnic minority protection.

Indeed, ethnic minorities need good governance to foster their interest in public life. Good governance, at least, composes of the principles of transparency, participation and human right which may carry the interest of ethnic minorities in the middle of the majority's domination. Good governance may ensure the implementation of the principle of transparency which provides all people, including ethnic minorities, access to public information. The good governance principle of transparency will guarantee non-discriminatory access to public documents, decision-making processes, and public hearings. The Public Disclosure Act or Government Information Act are the key documents to emphasize the opportunity for ethnic minorities to engage with regulations or decision-making processes. Herewith, ethnic minorities can strengthen their position with sufficient information and later on they can improve their capacity to participate in politics and governmental programs.

Furthermore, the good governance principle of participation may empower ethnic minorities' legal ability in facing problems of discrimination, maladministration and other legal difficulties. Ethnic minorities may use their legal rights to access justice. By making appeals to the court, complaining to the Ombudsman and the National Human Rights Institutions, and submitting objections to the government bodies, ethnic minorities may become more powerful and able to resolve their legal difficulties.

After the principles of transparency and participation from a good governance perspective, the implementation of the principle of human

rights for ethnic minorities is a pivotal component. The International Convention on the Elimination of all Forms of Racial Discrimination is an important international human rights instrument which many countries already ratified, including Indonesia and the Netherlands. Besides this regulation, social, economic, civil, political and cultural rights are various human rights regimes which must be protected. Within general rights such as universal fundamental rights, ethnic minorities are also entitled to accessing minority-specific rights, including language rights, self-government, etc.

Apart from the fulfilment of the implementation of the principle of transparency, participation and human rights mentioned above, this paper tries to describe theoretical explanations of the concept of good ethnic minority justice. Good ethnic minority justice is a notion of good governance mainstreaming, especially concerning legal protection of ethnic minorities. Starting from delineating the general concept of justice, which mainly focuses on justice based on the will of the majority, good ethnic minority justice also carries the position of ethnic minorities and ensures the implementation of good governance by government bodies.

Research problem and method

Ethnic minorities' problems are often faced discrimination, stereotyping, prejudice, ethnic bullying and so on. From legal theory viewpoint, what is the main inquiry to approach the sense of justice by ethnic minorities? Is that good governance principles such as the principle of transparency, the principle of participation and the principle of human right may foster the position of ethnic minorities? Furthermore, how to define the notion of good ethnic minority justice theoretically in order to empower the position of ethnic minorities. With the legal method, especially a normative legal approach, this paper discusses the position of ethnic minorities in facing legal system in Indonesia and its comparison with the Netherlands. A normative legal approach is the legal research method which investigating a legal norm and the power of government institutions beside identifying philosophy of law or legal theory which applied in legal field.¹

¹ Pompeu Casanovas et al. *Introduction: Theory and Methodology in Legal Ontology Engineering: Experience and Future Directions*. Dalam, Giovanni Sartor et al. *Approaches to Legal Ontologies, Theories, Domains, Methodologies*. Spinger. Florence. See also, Coral M. Bast, Margie A Hawkins and Sharon Hanson. *Legal Method*, (London: Cavendish Publishing Limited, 1999).

Transparency

Non-discriminatory access to public documents should be implemented by governments in order to serve the needs of ethnic minorities. The minority rights revolution can only be realised by giving positive recognition to minority groups through executive policy, parliamentary regulation, and transparent court proceedings.² The creation of laws that guarantee the rights of ethnic minorities in social, economic, political, civil and cultural affairs, will improve the quality of the nation's degree as a legal government.³

Transparency is like lubricating oil for the engine of bureaucracy, ensuring that all citizens, including ethnic minorities, are granted easier access to the information they require.⁴ The regulation of public disclosure in Indonesia provides support to ethnic minorities in establishing the 'road' to the document source. They can apply for the following information: regulatory documents, court decision documents, financial statements, reports of project activities of public agencies, etc. (Articles 9-16, regulation of public disclosure in Indonesia).

Ease-of-access to information for ethnic minorities has unique dimensions other than just a matter of information needs and rights; this is a matter of social security. With access to sufficient information, ethnic minorities are more able protect themselves and be less likely to become victims of extortion. Further, with enough information, ethnic minorities can also actualise themselves in the public sphere by exercising their rights to free speech.⁵

Transparency is an essential principle for all public institutions. In the Netherlands, transparency is required at Ministries, provincial administrative authorities, municipalities, water boards, and industrial regulatory organisations etc. (Article section 1a). These public institutions are legally obliged to implement the principles of transparency for all citizens, including ethnic minorities who wish to access their information. In Indonesia, the term 'public institutions' has a fairly broad meaning, and includes executive institutions, legislative institutions, judicial institutions, state enterprises, non-governmental organisations, and political parties using state funds (Article 1, paragraph 3).

² John D. Skrentny. *The Minority Rights Revolution*, (Cambridge: The Belknap Press of Harvard University Press, 2004), 4.

³ Jonathan Friedman, *Cultural Identity and Global Process*, (London: Sage Publications, 1994), 79-82.

⁴ Linda Nicholson, *Identity Before Identity Politics*, (Cambridge: Cambridge University Press, 2008), 105.

⁵ Ian Brown & Christopher T. Marsden, *Regulating Code: Good Governance and Better Regulation in the Information Era*, (Massachusetts: MIT Press, 2013), xi.

Information and Communication Technology (ICT) plays an important role in supporting the implementation of perfect transparency. There is evidence to suggest that with the support of ICT, ethnic minorities can achieve sustained economic growth, increase productivity, access an increased number of employment opportunities, encourage innovation, strengthen the effectiveness and responsiveness of public services, and improve social inclusion. From the standpoint of the fulfilment of ethnic minorities' rights and interests, transparency has benefits in both economic and social dimensions.⁶

The source of ethno-cultural conflict can be mitigated if ethnic minorities have access to sufficient information. Ensuring access to relevant information allows ethnic to develop of legal strategies to protect their political rights as members of the community.⁷ One barrier to ensuring that transparent information is available to all is the issue of language; the political and legal jargon used by public institutions is a common barrier for ethnic minorities attempting to access information on legal, educational, and cultural affairs.⁸

Governments often fail to meet the linguistic needs of ethnic minorities. For example, despite the prominence of Chinese and Turkish communities in both Indonesia and the Netherlands, neither government provides translations in the native languages of these groups. Language policy is a complicated problem for transparency, especially considering that official languages have already been determined by the Netherlands and Indonesia. The issue of language can be understood as a technical problem that restricts access to information solely to those who are sufficiently fluent in the language in which it is written. At the very least, ethnic minorities' understanding of legislation is the most important requirement in receiving the information. However, although the disclosure of information ensures the enforcement of the transparency principle, not all European countries have regulations governing public information disclosure.⁹

⁶ In 2005, the Spanish government implemented *Plan Avanza*, a strategy to improve the use of ICT, which contains the development of ICT-based government in the period 2006-2009. Under the authority of the Ministry of Industry, Tourism and Trade (MITT), organisations were established that provide service performance information through ICT. Several support organizations were formed such as the State Secretariat for Telecommunication and the Information Society (STIS), the National Centre for the Application of ICT Based in Open Source (CENATIC) and the National Communication Technology Institute (INTECO). *Good Governance for Digital Policies. How to Get the Most Out of ICT. The Case of Spain's Plan Avanza*. OECD, 2010. Secretary General of the Organization for Economic Co-operation and Development, . 63.

⁷ Will Kymlicka. *The Rights of Minority Cultures*, (Oxford: Oxford University Press, 1995), 2.

⁸ *Ibid*, 3.

⁹ Other public disclosure regulation includes Estonia: Public Information Act 2000, Finland: Act on the Openness of Government Activities 1971, Greece: Code of Administrative Procedure 1986, Portugal: Law on Access to Administrative Documents 1993, Transparency International. *Corruption Risks in Europe*. 2012. Transparency International, available at <https://transparency.eu/wp-content/uploads/2016/10/2012-Corruption-Risks-In-Europe.pdf>, (accessed 2nd March 2018)

Prior to 2015, Spain did not have special rules on the disclosure of public information; Spain's Freedom of Information Act came into force later. Further, some regulations concerning public disclosure have had technical problems at the practical level, such as those noted by Transparency International concerning Estonia, Finland, Greece, Portugal, and Slovakia.

As discussed previously, in the Netherlands and Indonesia, public information disclosure has been the subject of regulation. Ethnic minorities have access to extensive channels to obtain the information that they want. In 1999, Indonesia ratified the 1965 International Convention on the Elimination of all Forms of Racial Discrimination. In 2008, more regulation was introduced concerning the fulfilment of civil rights, which reinforces the right to information (Article 9, Indonesia Elimination of all Forms of Racial Discrimination Act 2008).¹⁰

Through increased ease of access to information, ethnic minorities receive help in accessing public services. Ethnic minorities receive the benefit which comes from civil registry documents such as birth certificates, marriage certificates, identity cards, driving licences, passports, business licences, and so on. It is expected that a non-discriminatory implementation of the principle of transparency will reduce the risk of corruption or bribery. An indicator of support for ethnic minorities' interests should be measured in order to assess how successfully transparency regulations are implemented. Public services and the ease by which ethnic minorities access information are factors that should be added to a National Integrity System Assessment Approach for evaluating the success of a transparent system in the legislative, executive, and judicial institutions, and in the public sector, law enforcement agencies, the electoral management body, ombudsmen, supreme audit institution, anti-corruption agencies, political parties, media, civil society, and business.¹¹

Last but not least, transparency may allow everyone, including ethnic minorities, to have better access to public information. The Public Disclosure Act establishes a public information system that is accessible and beneficial for ethnic minorities and combats discrimination. Apart from transparency, it prevents social conflict among ethnic groups. The greater transparency system provides good management of public

¹⁰ Article 9 discusses: the rights to freedom of movement, the right to leave places in Indonesia, the right to establish a family, the right to defend nationality, the right to personal wealth, the right to think, the right to express opinion, the right to freely and peacefully gather, and the right to use any language freely. Indonesia Elimination of all Forms of Racial Discrimination Act 2008.

¹¹ Transparency International. *Fighting Corruption in South Asia: Building Accountability*. 2014, https://www.transparency.org/whatwedo/publication/fighting_corruption_in_south_asia_building_accountability, (accessed 2 March 2018)

information in introducing social life and cultural heritage of ethnic minorities in the public sphere, so that it can reduce stereotyping towards ethnic minorities. Furthermore, transparency also encourages government bodies to establish open access to transparent government meetings. This involves discussions of governmental acts such as orders, regulations, decisions, policy rules and plans.

Participation

In looking at how 'good governance' works in a administrative authority, we must examine how deep community participation penetrates the mechanism which is provided by the democratic channel. Substantive democracy denies consequences of majoritarianism as the mainstream decision-making structure.¹² This research will explore how ethnic minorities participate in the form of popular initiatives, citizen's panels, referenda, and community participation level.

Strengthening the legal capacity and awareness of the ethnic minorities' rights will enable them to be able to maintain and defend their own interests. Because the pathology of democracy is that minorities do not always get what they deserve due to the dominance of majority, ethnic minorities should strengthen their communities in the fight for their rights and justice through procedural mechanisms. An anarchist approach would potentially risk ethnic minorities becoming trapped in a controversial discourse. Support for such an approach may be found in some communities – particularly those in stark opposition to the status quo – but those who work in bureaucracy and society are often less enthusiastic. Anarchism can create social hatred. Through the use of an appropriate procedural mechanism, within the framework of the legal system, ethnic minorities will receive sympathy.¹³

Legal procedures have been provided by regulation by which ethnic minorities can participate both in Indonesia and in the Netherlands. Under the General Administrative Law Act (GALA) in the Netherlands, ethnic minorities can be involved in the process of regulatory discussion and administrative systems (Article 3:10), give an answer in writing or orally to interested parties (Article 3:13), access draft decisions (Article 3:11), and express views on a draft decision (Article 3:15). Similar options are also available in Indonesia. Every member of an ethnic minority is entitled to file a lawsuit for compensation through the courts for acts of racial discrimination and

¹² Peter Emerson. *Defining Democracy Voting Procedures in Decision-Making Elections and Governance*, (London: Springer, 2012), 15-16.

¹³ Jeanette Rodriguez & Ted Fortier. *Cultural Memory Resistance, Faith and Identity*, (Texas: The University of Texas Press, 2007), 84-86.

ethnic harm done to them (Article 13, Law on the Elimination of Racial and Ethnic Discrimination). In this context, ethnic minorities can be a legal force against their oppression. Ethnic minorities must fight for political, social and civil rights in the era of democracy through the efforts of participation in the public sphere.¹⁴ In this context, the existence of the diverse citizen groups will be at stake and judged on how they actively perform in the public sphere. Ethnic minorities will not be able to defend their fundamental rights if they isolate themselves from public life and socio-political-legal affairs.

The modern legal system should provide opportunities for all citizens, including ethnic minorities, to actively participate in a competitive and free space.¹⁵ In the Netherlands, ethnic minorities definitely have rights that are worth fighting for. Among other rights are the right of employment and the right to become members of the liberal professions. After the implementation of section 5 of the Equal Treatment Act, ethnic minorities are entitled to be free from discrimination in: public advertising of employment; job placements; the commencement or termination of employment; the appointment and dismissal of civil servants; the terms and conditions of employment; the permitting of staff to receive education; promotion; and working conditions. In the Dutch Equal Treatment Act, regulation regarding ethnic minority rights and other provisions in the socio-economic field provides equal access to goods and services.

These rights, set out under the legislation, are placed in a passive field. Such legislation can only work through the active participation of ethnic minorities, especially by pushing for regulation to be applied by the government.¹⁶ Legal empowerment of ethnic minorities is needed in order to restore the principles of security of ethnic minorities, such as: basic freedoms on their defence; the reduction of discrimination in economic and civil society; a level playing field for ethnic minorities in gaining access to goods and services; and various programmes and policies to promote 'fair equality of opportunity.'¹⁷

Various empowerment programmes and anti-discrimination laws are implemented in accordance with the Dutch Equal Treatment Act (Article 7). The government should supply specialised services for

¹⁴ Assaad E Azzi, et al. *Identity and Participation in Culturally Diverse Societies. A Multidisciplinary Perspective*. (Malden: Wiley-Blackwell, 2011), 3-4.

¹⁵ Chris Barker & Dariusz Galasinski. *Cultural Studies and Discourse Analysis. A Dialogue on Language and Identity*, (London: Sage Publications, 2001), 28-29.

¹⁶ Carol E. Kelley. *Accidental Immigrants and the Search for Home. Women, Cultural Identity and Community*, (Philadelphia : Temple University Press, 2013), 163.

¹⁷ Alan Patten. *Equal Recognition the Moral Foundations of Minority Rights*, (Princeton: Princeton University Press, 2014), 150.

ethnic minorities that provide advice and support about education and careers. Public institutions must provide ethnic minorities with good service, for example such public institutions as: public service housing providers, social services, healthcare providers, and cultural affairs and educational institutions. In addition, the Equal Treatment Act encourages non-state institutions, such as private persons and business corporations, to participate in treating citizens fairly and equally.

In Indonesia, the active participation of ethnic minorities is needed to enforce the law to make sure that the perpetrators of discrimination are brought to justice. Some criminal regulations are provided within the regulation of racial and ethnic discrimination elimination in Indonesia. When an individual remove or restricts a person's civil, political, economic, social, or cultural rights, that individual can be subjected to one year in prison and a fine of as much as 100 million IDR¹⁸ (Article 15). Criminal actions of hatred based on ethnicity discrimination are also punishable by imprisonment of five years and a fine of 500 million IDR¹⁹ (Article 16).

Within a legal framework, ethnic minorities can actually gain a strong position. They are fairly well protected by regulations which are sensitive to their interests.²⁰ Therefore, the fulfilment of their rights depends on how able ethnic minorities are to participate actively and critically towards the government. They not only participate individually, but also through their social organizations, fighting for the communal interest among them. Kymlicka emphasises the importance of social organisation for ethnic minorities as a means of implementation of freedom of expression, which allows them to freely seek followers. A social organisation's struggle for the collective interest is a symbol of communal participation which is applicable to the law of nature in the cultural marketplace. From this point, ethnic minorities can actualise themselves through a collective movement. For example, a Chinese community can open restaurants, build Chinese schools, and establish social organisations for the promotion of Chinese culture. Similarly, Turkish citizens also have the right to build a mosque for worship, to open stores, and so on.²¹

Through the participation of ethnic minorities, the legal state does not lose its legitimacy in the democratic space. Conversely, the

¹⁸ Approximately US\$7,400.

¹⁹ Approximately US\$37,000.

²⁰ Diana Spencer, *Ergo Sum. Becoming Roman in Varros de Lingua Latina.*, In, Martin Bommas, *Cultural Memory and Identity in Ancient Societies*, (New York: Continuum International Publishing Group, 2011), 44.

²¹ Will Kymlicka, *Multicultural Citizenship a Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), 10-15.

government's legitimacy is strengthened by minority participation²² which can help make the government and public institutions increasingly progressive and responsive. Political representation will not only increase the strength of ethnic minorities in the political structure of power, but also enable individuals and groups to retain the rights to legal empowerment in the social, political, economic, civil and cultural spheres. Eliminating discrimination through the active participation of ethnic minorities is needed; one way is through the Ombudsman. Active participation will enable ethnic minorities to attain political recognition as a means of maintaining cultural identity and achieving political needs. Through active participation, ethnic minorities can submit proposals to help to understand and mitigate the causes of the discrimination from which vulnerable groups suffer.²³ With this political recognition, equal treatment can be developed satisfactorily. Through the procedures provided by the government and law, ethnic minorities have a great opportunity to strengthen their rights. Kymlicka explains that the position of ethnic minorities requires many rights in a multicultural era in the democratic rule of law. Firstly, self-government rights, which are a form of minority power delegation within a system of a country. Secondly, poly-ethnic rights, namely financial support and legal protection for ethnic minorities. Thirdly, special representation rights, which guarantee that ethnic minorities will get positions in the public service.

However, the demands of minority ethnic groups are not automatically met by the government. Kymlicka believes that the implementation of the equality principle is likely to be the result of ethnic minorities' efforts to fight for their rights and self-determination. Through self-determination, ethnic minorities are expected to be active, creative, and skilled in creating strategies to participate in public life. Within the bureaucratic framework, public participation is important in revealing the isolation of ethnic minorities' interests to convey their goals in accessing the common good and resources. Ethnic minorities need to build social capital by increasing their active participation in public institutions. Democratic institutions will respond to such participation, treating it as a vital material in reforming and strengthening public programmes. In public participation, solidarity among ethnic minorities is needed for the fight to obtain justice.

As all people, ethnic minorities also deserve to have legal protection

²² G.H. Addink. *Good Governance: Concept and Context*, (Oxford: Oxford University Press, 2015 forthcoming), 108.

²³ Alan Patten, *The Moral Foundations of Minority Rights* (Princeton & Oxford : Princeton University Press, 1995), 156-157.

of their fundamental rights; specially when the countries already ratified the International Covenant on the Elimination of Racial Discrimination which stipulates the prohibition of discrimination and equal rights. Sometimes, ethnic minorities are not only entitled to general human rights protection, but also specific-minority rights such as Article 27 of the International Covenant on Civil and Political Rights. This particular article stipulates the obligation of the government to respect minority rights ranging from the recognition of ethnic, religious, and linguistic minorities. With the protection of human rights, ethnic minorities can have a better life.

Human right

In the Netherlands, the Dutch Institute for Human Rights identifies the grounds and areas for discrimination. The fundamental grounds of discrimination generally involve gender, race, ethnicity, age, disability, sexual orientation, religion and belief. The arena of discriminatory actions ranges from public space, employment, education, housing, social protection, to goods and services, public transport, etc. A specialised agency that deals with the protection of ethnic minorities and the discrimination that they experience is therefore an important democratic channel.

A specialised institution for handling the legal protection of ethnic minorities is expected to become an institutional expression of the struggle for mutual recognition.²⁴ Such a specialised institution will provide important contributions to the creation of minority ethnic identities that are more intersubjective than individualistic. The rights of ethnic minorities construct a fragile humanitarian image of vulnerable groups.²⁵ The present era is not one of slavery when people did not have their rights protected. The framework of development of the protection of ethnic minority rights is now used to create political structures and standards in order to ensure legal certainty.²⁶

Institutions such as a human rights commission has special administrative functions to correct the policies, programmes, and service systems of public institutions which are considered discriminatory. An institution that represents the presence of a government must be in favour of diversity of the community which consists of various

²⁴ Annelise Riles, "Anthropology, Human Rights and Legal Knowledge: Culture in the Iron Cage," *The American Anthropological Association*, Vol. 108, Issue 1, (2006): 52-56.

²⁵ Daniel Bonilla Maldonado, "The South-North Exchange on Theory, Culture and Law: Law, Culture and Indigenous People: Comparative and Critical Perspectives: Essay: Indigeneity and the State: Comparative Critiques: The Principle of Political Unity and Cultural Minorities Self-Government," *Florida Journal of International Law*, Desember, 17 Fla, Int'l L, 525.

²⁶ DJ Galligan. *Law in Modern Society* (Oxford : Oxford University Press, 2006), 49.

demographics.²⁷ From this point, the power relations created among the people, the human rights institutions, and the public institutions can work together to eliminate discrimination. In this context, biopolitics works to establish discipline among the inequalities of the social hierarchy. Ethnic minorities in circles of power should use knowledge-based methods to inform administrative behaviour. Anti-discrimination discourses that emerge from society may be used to discipline control ethnic minorities.²⁸

In the Netherlands, the Dutch Institute for Human Rights works on projects to eliminate discrimination and social exclusion using human rights instruments. Discrimination violates the natural rights possessed by all human beings from birth. While social exclusion is contrary to the sense of justice and tolerance which are supposed to reside in the modern constitutional state, discrimination and exclusion do occur, for example in the labour market, education, housing, purchase of goods or services, the entertainment industry, and sports.

Therefore, it is necessary to improve legal awareness, especially on what human rights are and how they work. Legal protection for ethnic minorities needs to be implemented as a part of respect for human nature. Hence, political campaigns and populist strategies to promote the rights of ethnic minorities in public life are essential, and efforts to improve legal protection should not rely solely upon the struggle through policy formulation and the courts.²⁹ The scope and content of ethnic minority rights should be broadened to give a sense of justice for all citizens, without discrimination or social exclusion.

The protection of human rights for ethnic minorities depends on legal instruments namely, the performance of specific institutions (human rights commission) and the participation of ethnic minority communities to fight for their own rights. The instrument of human rights for ethnic minorities is a source of jurisprudence derived from international covenants, regional agreements, and national regulation on ethnic minority rights. Human rights instruments are based upon a moral foundation has and have legal powers to force government to provide protection to ethnic minorities.³⁰ Some specialised institutions, from international criminal tribunals, ad hoc institutions on human

²⁷ Alan Hunt. *Governing Morals a Social History of Moral Regulation*, (Cambridge : Cambridge University Press, 1999), 4-14.

²⁸ Costas Douzinas, *Human Rights and Empire. The Political Philosophy of Cosmopolitan* (Oxford & New York : Routledge, 2007), 111-112.

²⁹ Costas Douzinas. The Poverty of (Rights) Jurisprudence, in: Gearty, C. and Douzinas, Costas (eds.) *The Cambridge Companion to Human Rights Law Cambridge Companions to Law* (Cambridge : Cambridge University Press, 2012), 59-60.

³⁰ Helle Porsdam, *From Civil to Human Rights. Dialogues on Law and Humanities in the United States and Europe*, (Cheltenham: Edward Elgar Publishing Limited, 2009), 114-118.

rights, to government programmes on human rights, etc., implement the powers, based on moral foundations, which govern the rights of ethnic minorities.³¹ Through working in the legal dimension, standard setting, political discourse, and mainstreaming, institutions must provide improvements to the fulfilment of rights for ethnic minorities.

Discrimination, indeed, hinders the fulfilment of social rights which are supposed to be every person's birth right. In the era of globalisation, the idea of human rights, including ethnic minority rights, cannot be stopped. The struggle of people in pursuing the fulfilment of their rights can be called 'ethos citizenship,' a form of struggle against political authority structures and the civilizational approach for cultural identity.³² Ethnic minorities are vulnerable groups of people who are scapegoats for crimes happening in metropolitan cities. Therefore, protection for ethnic minorities in the form of legal assistance needs to be considered.³³

There is no single notion of 'a good life' or 'good society.' The discourse to fight against racism and violation based on ethnicity is continuously conducted. In 2001, the Durban UN Conference against Racism discussed the numerous discriminatory actions of governments. The moral foundation of human rights must become a generative source for ordinary people's understanding of both a good life and a good society.³⁴

The struggle which can be expected in achieving justice for ethnic minorities will be played out in the courts. One particular challenge is that the 'black letter' approach of many courts is incompatible with more humanitarian interpretations of law. Therefore, we need to find media organisations which are concerned with human rights to pressure the court authorities to pay more attention to international human right issues.³⁵ Although the courts can be independent and impartial, everyone must have a fair and public hearing within reasonable limits. The defence put forward by advocates in court must, when relevant, also involve the legal chapters on human rights.

³¹ Some institutions which are often used as references in the human rights discourse in Europe and the US, are the UN Human Rights Committee (HRC), the European Court of Human Rights, the European Court of Justice, the Inter American Court of Human Rights (IACtHR), the Committee on the Elimination of Racial Discrimination (CERD), and the African Commission on Human and People Rights (AfrCommHPR). Gaetano Pentassuglia. *Minority Groups and Judicial Discourse in International Law a Comparative Perspective*, (Leiden: Martinus Nijhoff, 2009), p. 11.

³² Richard Fal. *Achieving Human Rights*, (Oxford & New York : Routledge, 2009), 71.

³³ Boaventura de Sousa Santos, "Toward an Epistemology of Blindness Why the New Forms of Ceremonial Adequacy neither Regulate nor Emancipate," *European Journal of Social Theory*, 4 (3), (2001): 251-279.

³⁴ Mary Edmund. *A Good Life Human Rights and Encounters with Modernity*, (Canberra : Australian National University Press, 2013), 9.

³⁵ Philip Plowden & Kevin Kerrigan. *Advocacy and Human Rights Using the Convention in Courts and Tribunals*, (Oxford & New York : Cavendish-Routledge, 2002), 213.

Theoretical reflexion: the concept of good ethnic minority justice

Now that good governance and ethnic minority protection in the Netherlands and Indonesia have been explored in detail, it is time to use these findings to develop good ethnic minority justice through theoretical and empirical reflexion. Good ethnic minority justice is a notion of justice that aims to mainstream good governance into the foreground of ethnic minority issues, encourage properness of state institutions and facilitate participation. Indeed, a nuanced understanding the idea of justice requires a multidisciplinary approach that includes insights from economics, social, cultural, symbolic, literature, art, politics, etc. However, I will only focus on a legal approach to analyse the notion of good ethnic minority justice.

In the both the Netherlands and Indonesia, the report of International Convention on the Elimination of All Forms of Racial Discrimination is quite disappointing; ethnic minorities remain in a weak position. To improve this situation, the notion of good ethnic minority justice is needed. State power is often unenthusiastic about observing the ideas of good governance.

The legal approach to good ethnic minority justice delineates that the legal norms represent a tremendously tolerant legal system. The spirit of emancipation is present in both the Dutch Constitution and the Indonesian Constitution. Equal treatment is a key theme of both Dutch and Indonesian legislation. However, I see little evidence of good ethnic minority justice in legal practice. The performance of state apparatuses does not elucidate exciting news. State institutions are not really transparent. People do not really have much passion to participate in politics and government. Human rights appear to have been abandoned. We must repair the house and wait for the sunny day when the sun rises to shine its light. Good ethnic minority justice is the outcome, destination, and objective of public life. Law enforcement that ignores discourse of justice is simply a performance of procedural requirements, and lacks substantial justice. This absence of good ethnic minority justice is especially conspicuous in the stagnation of the prosecution of the 1965 and 1999 crimes against humanity in Indonesia. Law enforcers continue to exalt the black letter law, insisting there is insufficient evidence to prosecute the lawsuit. Although the investigation of the National Commission of Human Rights of Indonesia has concluded, their findings have not resulted in any prosecutions or further action. Forthwith, justice is suspended!

To use a metaphor; good ethnic minority justice is 'the sun', whose light is needed for life to flourish. We can feel the sun, but we cannot touch it. In Javanese culture, the story of puppet tells 'Bathara Surya'

who is the Sun god. His existence is a vital, especially for plant and animal life. He is as one of the sacred and mighty gods who is armed with many heirloom weapons. In Indonesian folklore, Surya, like the sun, is so bright that even his wife, Saranyu, is unable to see him. Together, they have two children: Yama (the God of the Death) and Sani. Yama and Sani act as judges of humans before they enter the afterlife. In the other words, Yama and Sani are symbols of immortal justice in Javanese culture.³⁶ In literature, people have the sense of justice, but postmodern legal thought says that achieving a concept of justice is often an impossibility.³⁷ Psychoanalytic jurisprudence as portrayed in the structure of justice is similar to the structure of unconsciousness.³⁸ I sincerely believe in justice, but more often than not, it is its absence that is more noteworthy than its presence in the Courtroom, the presidential palace, the offices of ministers, and municipalities. This has become ever clearer during my investigations of good governance and discrimination.

Returning to my metaphor, if good ethnic minority justice is the sun, we also require 'a house' in which to live. I call this house 'good ethnic minority governance'. A traditional Javanese is called a 'Joglo', a building which not only to protects the people who reside there, but also it represents wisdom, harmony with nature, a peaceful place which someone has built, and the pursuit of happiness. The Joglo is supported by pillars what called '*saka guru*,' which hold back the roof and strengthen the whole building.³⁹ Similarly, transparency, participation and human rights are the 'pillars' of good governance; they provide structure and stability to good governance. A house built on these pillars will protect ethnic minorities from storms and the rain. Discrimination is a social disaster – and so a sturdy house is required to protect the people. A stable house requires the implementation of good governance, good ethnic minority legislation and institutional support (proper administration, the Court, the fourth power of the Ombudsman and the national human rights institutions), and to be supported by strong pillars of transparent governance, public participation of ethnic minorities, and fulfilment of human rights.

Hopefully, these gloomy days will end and, the sun of good ethnic minority justice will rise above the horizon. The sun provides

36 Rio Sudibyoprono et al. *Ensiklopedia Wayang Purwa*, (Jakarta: Balai Pustaka, 1991), 529-230.

37 Jacques Derrida, "Force of Law: The Mystical Foundation of Authority," Translated by Mary Quaintance. *Cardozo Law Review* 11 (1989-1990): 920-1045.

38 Jacques Lacan. *The Other Side of Psychoanalysis*. Book XVII. Translated with Notes by Russell Grigg. 1991, (New York : Norton & Company, 1991), 29.

39 Djono, Tri Prasetyo Utomo, and Slamet Subiyanto, "Nilai Kearifan Lokal Rumah Traditional Jawa," *Hu maniora*, Vol. 24, No. 3, (2012): 269-278.

a warm light to the house of good ethnic minority governance with many flowers of multiculturalism, tolerance, peace, and equality, in a beautiful garden. The three pillars of transparency, participation and human rights are robust enough to support this house. All the people who live in the house are able to pursue their own happiness. Sadly, for now, this story is but a utopian dream. When we wake in the night it is to disappointment – a realisation that equality is only a dream.

The concept of justice itself is very complicated and abstract, and requires a multidisciplinary approach. The Oxford Dictionary states that justice is synonymous with open-mindedness, non-partisanship, lack of prejudice, disinterestedness, neutrality, objectivity, lack of bias, impartialness, impartiality, egalitarianism, even-handedness, equitableness, equity, fair-mindedness, fair play, justness, and fairness.⁴⁰ Many scholars have also made contributions to defining the concept of justice. John Rawls says that the idea of justice is about promulgating the social contract and extending the beneficiary group to include as many people as possible (utilitarianism).⁴¹ Dworkin also argues that the concept of justice requires institutions that are just act without making arbitrary differentiations between people regarding basic rights and duties.⁴² Meanwhile, Hart argues that justice should reflect the morals of the public.⁴³ Kant distinguished between three forms of justice; protective justice (*justitia testarix*), commutative justice (*justitia communitiva*), and distributive justice (*justitia distributiva*): the first is internalisation of rights, the second is the externalisation of rights, and third concept is about the extension of rights.⁴⁴ To Lacan, the concept of justice is part of the deep unconsciousness of mankind, alongside emotion, pleasure, satisfaction, fantasies, and, dreams.⁴⁵ And of course, many other scholars have been defined and analysed the notion of justice.

Furthermore, the theoretical concepts of rule of law, justice and democracy can empower the idea of good ethnic minority governance. If equal treatment can be applied, the Indonesian government and Dutch governments may achieve the concept of goodness envisaged by Kant and Aquinas. Enforcing good ethnic minority governance in

⁴⁰ <https://en.oxforddictionaries.com/definition/justice>, Last visited on April, 24, 2017.

⁴¹ John Rawls. *A Theory of Justice*, (Cambridge: The Belknap Press of Harvard University Press, 1971)

⁴² Ronald Dworkin. *Justice for Hedgehogs*, (Cambridge: The Belknap Press, 2011), 166.

⁴³ HLA. Hart. *Law. Liberty and Morality*, (Oxford : Oxford University Press, 1963), 11.

⁴⁴ Immanuel Kant. *The Philosophy of Law. An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*, (Edinburgh : T&T George Street, 1887), 155.

⁴⁵ Jacques Lacan. *The Other Side of Psychoanalysis*. Book XVII. Translated with Notes by Russell Grigg. (New York: Norton & Company, 1991), 23; See also, Jacques Lacan, *The Ethics of Psychoanalysis 1959-1960: The Seminar of Jacques Lacan*. Edited by Jacques-Alain Miller, (Oxford & New York, Routledge, 1992), 10; See also, Jacques Lacan, *Seminar 14: The Logic of Fantasy*, (Oxford & New York: Routledge, 1966), 53.

an approach informed by biopolitics and *homo sacer* presents many challenges. Of course, good ethnic minority governance is supported by the ideas of rule of law and democracy in Indonesia and the Netherlands. According to Tamanaha, the rule of law is a prerequisite for the principles of properness, due process, legal certainty, anti-arbitrariness, etc. Similarly, Habermas states that the idea of democracy encourages participation with better a communicative methodology, but in fact discrimination, stereotyping, prejudice, and so on are denounced by the existence of obligation and protection of good governance. Furthermore, Foucault's notion of biopolitics is a useful tool for analysing the difficulties of implementing anti-discrimination law. Agamben's *homo sacer*, in addition, can also be utilised to analyse the position of ethnic minorities as those abandoned and rejected by civilization. Agamben's *homo sacer* can also be used to criticise the existence of sovereignty, sadly, the government has failed to observe their obligations. As can be seen at the cases of baby milk powder and Arabic sounding name in the Netherlands and the crimes against humanity in Indonesia, the metaphor of *homo sacer* has applications in the legal field. Ethnic minorities can be thought of as *homo sacer* whose fundamental rights have been forgotten in the Netherlands and Indonesia.

Accomplishing the goals of good ethnic minority governance is the way to achieve what so-called good ethnic minority justice. As I describe in paragraph above, good ethnic minority justice is a notion which goes beyond of Rawls' theory of justice that emphasised utilitarianism and the social contract. Indeed, good ethnic minority justice ensures that benefits (utilitarianism) are delivered not only to the majority but also ethnic minorities, and that the social contract is not wholly occupied by majority – but can include ethnic minorities who are also empowered to enter public discourses. Furthermore, the term 'justice' as wielded by good ethnic minority justice requires governments to be more active in protecting ethnic minorities. Good ethnic minority justice may act as a counterbalance to pragmatic libertarianism which discourages administrative authorities from intervening with the social-political market.

Good ethnic minority justice depicts ethnic minorities as members of vulnerable groups, which is why state institutions must be more active to stimulate ethnic minority groups to participate in politics and government. On the other hand, understanding good ethnic minority justice is valuable to ethnic minorities who living in the Netherlands and Indonesia to equip their social capital in their struggle against discrimination and defending their fundamental rights. Good ethnic

minority justice is part of the idea behind Article 1 of the Dutch Constitution and Article 28 of Indonesian Constitutions. Ethnic minorities can advocate for their position procedurally using the legal basis of Dutch Equal Treatment Act or the Indonesian Equal Treatment Act, or easily access institutional support (the administration, the Court, the fourth power of the Ombudsman and the Netherlands Institute for Human Rights). As the sun, good ethnic minority justice illuminates the situation of ethnic minorities and enables them to request state institutions to be more transparent, empower their public participation and receive their fundamental rights.

Conclusions

Good ethnic minority justice is a notion that all of ethnic groups are treated equally regardless of their ethnic, religious, and cultural background. Sometimes, affirmative action may be needed to address the imbalance between ethnic minority groups and the majority. Furthermore, good ethnic minority justice is established from the lack of dominant theories of justice which empathizes the will of the majoritarian society. At the same time, good ethnic minority justice reveals that ethnic minorities are members of vulnerable groups who often experience discrimination, stereotyping, prejudice, and maladministration. Therefore, government bodies must be more progressive to protect ethnic minorities. Progressive government bodies are possible when they apply ideas of good governance, at least implementing principles of transparency, participation and human rights.

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