The Role of Non-Governmental Organizations in the Realization of Economic, Social and Cultural Rights in Indonesia: Check and Balance to the National Reports of State Party in the Assessment of State Performance

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Abstract—Non-Governmental Organizations have pivotal role as a monitoring organ with high legitimacy to assure the realization of economic, social and cultural rights. The relationship between human rights monitoring bodies, inter alia in this paper, the Economic and Social Council (with its subsidiary bodies) and the State party is checked and balanced by the existence of Non-Governmental Organizations. The report from the Non-Governmental Organization to the human rights monitoring bodies is named as the “shadow report”. The shadow report from Non-Governmental Organizations contributes in the assessment process of the human rights monitoring bodies concerning the performance of State party in realization of economic, social and cultural rights. The shadow reports vis-à-vis with the national reports from the State party are required to clearly assess the performance of State party. Due to the important role of Non-Governmental Organizations in the human rights monitoring system, the consultative status as the basis for legal standing is given to Non-Governmental Organizations.

Keywords—Indonesia, human rights, Non-Governmental Organizations, state obligations.

I. INTRODUCTION

The Economic and Social Council (ECOSOC) Resolution 1996/31 granted the consultative status for the Non-Governmental Organizations (NGOs).1 The consultative status gives the legal basis for the NGOs to establish communications with the ECOSOC and its subsidiary bodies.2 The ECOSOC promulgates the legal foundation for the participation of the NGOs within the international relations because of the need to have civil society’s participation in measuring and promoting the implementation of the International Covenant on the Economic, Social and Cultural Rights (ICESCR) by the State parties.3 Nowadays, many States are still struggling with the implementation of the ICESCR such as Indonesia.4 Establishing the means to achieve the economic, social and cultural rights is the main agenda of the positive obligations carried by the States under the ICESCR and it is not a simple thing to be done because the States should respect, protect and fulfill the economic, social and cultural rights.5 For example, in the right to health under the Art. 12 of the ICESCR, the State parties should recognize and ensure that every citizen enjoys the highest attainable standard of physical and mental health.6 In order to ensure that the citizen can enjoy the right to health then the States should proactively establish means for it such as create a comprehensive health care system and ensure the accessibility and availability of the medical centers.7 Due to the positive


2 Supra n. 1, ECOSOC Resolution.

3 Ibid.


obligations that are carried by the State parties then the Art. 2 of the ICESCR addressed that the State parties shall establish the national or international cooperation in order to progressively achieve the realization of the economic, social and cultural rights. In this paper, I shall analyze the role of the NGOs in its cooperation with the ECOSOC and the States in the implementation of the ICESCR.

II. A. INTERNATIONAL COVENANT ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS.

There are three generations of human rights, the first is the individual rights which are embodied within the International Covenant on Civil and Political Rights (ICCPR), the second is the economic, social and cultural rights which are embodied within the ICESCR and the third is the community rights such as the rights to self-determination and development. The distinction between the ICCPR and the ICESCR lies within the role of the government in the implementation of these rights. The ICCPR established the negative obligations in the Art. 2 which the main duty of the States in the implementation of the civil and political rights is by restraining the government’s violation towards these rights. For example, in the implementation of the Art. 7 ICCPR, freedom from torture or cruel, inhuman or degrading treatment, the government should refrain itself from torturing people in order to comply with its obligations. The Art. 2 of the ICCPR is also established clear definition of the state’s obligations which are to ensure that the rights of individuals or non-individuals within its territory be respected and protected.

The ICESCR introduced different concept of the state’s obligations which is the positive obligations of the States. The positive obligations in here means that the States should give fulfillment of the economic, social and cultural rights. Addressed in the Art. 2 of the ICESCR that the States should take steps with a view to achieve progressively the full realization of the economic, social and cultural rights. As the example of the positive obligations, the right to water which is significant to fulfill the right of the adequate living strategy and plan of action to improve the water conditions in its territory. Due to the nature of the positive obligations which demands that the States should “be creative but responsible” in choosing the means to make the realization of these rights then implementing the ICESCR is not a simple thing to do. It needs State’s intervention, efforts, resources and cooperation whether in the national or international level from the States and other legal actors within the international law.

II. B. NON-GOVERNMENTAL ORGANIZATIONS WITHIN THE INTERNATIONAL LEGAL ORDER.

The rise of the civil society which is represented by the NGOs within the international relations is one of the most interesting social phenomenons. The establishment of the “international civil society” is no longer a utopia but a reality. People have the need to associate in order to pursue the same interest then they institutionalize the association in the form of NGO. The rapid growth of NGOs is the availability and accessibility of the fresh and clean water for the citizens. The States should establish the adequate water supply system and management, adopt the national water strategy and plan of action to improve the water conditions in its territory. Due to the nature of the positive obligations which demands that the States should “be creative but responsible” in choosing the means to make the realization of these rights then implementing the ICESCR is not a simple thing to do. It needs State’s intervention, efforts, resources and cooperation whether in the national or international level from the States and other legal actors within the international law.


Supra note, n. 15, Para. 25-26.

S. Friedman, Supra N.4.


Supra note, n. 19.


11 ICCPR, Art. 7.
12 ICCPR, Art. 2.
13 ICESCR, Art. 2; Supra n. 8, para. 9.
14 ICESCR, Art. 11.
evidence of the rise of the civil society’s power within the international relations.22

There are many prominent human rights NGOs in the international relations such as The International Committee of the Red Cross (ICRC), Amnesty International, Human Rights Watch and many more.23 The NGOs have become an important actor in the international relations, i.e., The ICRC has contributed great parts in the development of the International Humanitarian Law, The Amnesty International and Human Rights Watch have given numerous considerable reports about human rights violations in all over the world.24 Due to this social phenomenon, the ECOSOC has established the channel for the NGOs participation in the Resolution 1296 (XLIV).25 This is the first time, “consultative status” as a legal term was introduced to accommodate the NGOs in the international human rights system. This status guarantees that NGOs can i). Receive the provisional agenda of the ECOSOC, ii). Attend the meetings of the ECOSOC and its subsidiary bodies as the observers, iii). Submit written statements to the ECOSOC, iv). Have the right to be heard in the form of making oral presentations during the meetings of the ECOSOC and v). By an invitation from the ECOSOC, may join international conferences convened by the United Nations.26

In the Resolution 1996/31, the ECOSOC expanded the criteria for the consultative status for the NGOs. The expansion of the criteria gives the chance for the national NGOs to earn the consultative status.27 Before this resolution entered into the force, consultative status can only be given to the NGOs which have the international structure such as the international and regional NGOs.28 The Resolution 1996/31 is a significant legal document which nurtures the growth of the NGOs in a way of giving national NGOs access to aspire in the contemporary international relations.29 In 2013, the ECOSOC has listed thousands NGOs with the consultative status.30 The consultative status defines the legal personality of the NGO.

II. C. THE ROLE OF THE NGOs IN THE IMPLEMENTATION OF THE ICESCR.

The role of the human rights NGOs in general is independently monitors the State in the implementation of the ICESCR. The NGOs conduct researches and survey about the State’s activities related with the human rights issues and submit the reports to the ECOSOC and its subsidiary bodies. The monitoring activity supports the idea of the separation of power which was introduced by Montesquieu.31 The theory of the separation of power explained that an entity should not possess absolute power because in the end, it will abuse the power.32 The supervisory organ should be established to create the check and balances in the system.33 In the national level, the power of the government (executive power) is limited by the parliament (legislative power). The parliament will monitor the government’s activity continuously in order to maintain the conformity of the government’s action and its mandate under the constitution.34

This is the theory that should be implemented in the international legal order. The States should not possess absolute power under the international relations. Their power should be limited by another power which is the power of the ECOSOC and the NGOs. The ECOSOC and the NGOs are limiting the power of the States in the form of monitoring the compliance of the States with their international obligations.35 In the monitoring process, the ECOSOC and its subsidiary bodies need to gather many data and information about the implementation of the ICESCR by the States. This has to be conducted to measure the progress and create recommendations for the States if it is necessary. Indeed the States are submitting the reports for the ECOSOC but the States’ reports are not enough to portray the actual conditions

25 Economic and Social Council, Resolution E/1296 (XLIV), 26 May 1968, Part I-III.
28 R. H. Ben-Ari, supra, n.17.
29 Economic and Social Council, List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council as of 1 September 2013, E/2013/INF/6, 4 October 2013, p. 3-120.
32 Ibid.
33 Ibid.
34 Ibid.
in the society. The States’ reports are often biased and highly subjective, i.e., the reports submitted by Indonesia.\textsuperscript{36}

Most States do “face-saving” by submitting reports which showed that there is no problem within the implementation of the ICESCR.\textsuperscript{37} This action causes obstruction in the effort to gain the actual situation in the society. In order put the balance and clarity in the assessment of the States’ reports then the ECOSOC needs another perspective which is provided by the NGOs. The NGOs are closer to the society and have less political influence from the States.\textsuperscript{38} The NGOs are not established by the States and do not depend on the States for its continuing existence, i.e., fund or facilities for the NGOs are not given by the States, these are the cause of their independence. Since the NGOs are free from the States’ political power, therefore they can provide more down to earth data about the human rights situation within the States.\textsuperscript{39} The process of comparing the States’ reports and the NGOs reports will guarantee the comprehensive recommendation from the ECOSOC and its subsidiary bodies. This circle of the cooperation between the State-ECOSOC-NGOs is very important to ensure the implementation of the States’ obligations under the ICESCR.

The NGOs also contribute significant impact in the empowerment of the society through the human rights education. It has been addressed by the Commission on Human Rights under the Resolution 1993/56 that human rights education is important in the implementation of the international human rights law.\textsuperscript{40} The effort to raise the awareness about human rights is one of the central programmes of the NGOs.\textsuperscript{41} People need to be aware of their rights and demand those from the government. The awareness of the human rights can only be built if people have an adequate understanding about human rights. Therefore, human rights education is very important to assure that the ICESCR be implemented comprehensively within the States.\textsuperscript{42}

\textbf{III. CONCLUSION}

The consultative status given by the ECOSOC to the NGOs defines the legal personality of the NGOs. By the consultative status, the NGOs have the chance to contribute legally through various means established by the ECOSOC and its subsidiary bodies towards the protection and fulfillment of the economic, social and cultural rights. The NGOs have the role to balance the power between the States and the ECOSOC in the international relations, to cooperate with the ECOSOC in monitoring the States’ implementation of the ICESCR and to empower and raise awareness of the society through the human rights education.

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