

THE STATE DETERMINES LEGAL SYSTEM WITH INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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ABSTRACT

Human rights, which are protected can be in the form of individuals, groups or property. The state or state officials as part of the state have an international obligation to protect citizens and their property, where international human rights standards are established and developed in various international forums. The purpose of this study is to review the Conventions related to Human Rights which guarantee the right of everyone to be treated equally before the law regardless of race, color, origin and ethnicity, which also establishes the Committee on the Elimination of Racial Discrimination, which oversees its implementation. Qualitative research uses a descriptive approach to collect data systematically, factually, and quickly according to the description when the research is carried out. The results of this study indicate that the Human Rights Principles provide guidance for law enforcers in prosecuting criminals. These principles emphasize the importance of oversight (including clarity in the chain of command) of law enforcement agencies. These principles also explain in detail the guarantee of the fulfillment of the right to life.

Keywords: Human Rights, International Law, Human Rights Law, United Nations

INTRODUCTION

That the history of human rights development is almost as old as the history of human civilization which is always dynamic and developing from time to time. At the beginning of life, humans are very dependent on the nature around them. Life is still isolated in small communities or certain clans according to race or descent. The pattern of life is still very simple and very individualistic and egocentric. The presence of other people, communities or other clans is considered an enemy, so that competition, fights, conflicts and wars are commonplace to maintain their survival and life. Who is strong, he who wins and will survive. The dark history of human civilization is still lagging behind and continues to this day, this is marked by disputes, conflicts and wars in various parts of the world.

METHODS

This research was conducted using a normative juridical research method by conducting a comprehensive study based on legislation and empirical juridical research, namely conducting an assessment based on observations of the handling of respect and protection of human dignity in emergency situations, including especially during armed conflicts. This research is a legal research that uses several approaches to answer the problems studied, namely: 1) the statute approach, 2) the conceptual approach, 3) the comparison approach, and 4) historical and philosophical approaches (historical approach) and (philosophy approach).

Data processing is done qualitatively. The written legal materials that have been collected are then systematized according to the problems studied. Furthermore, the legal material is reviewed and described in accordance with the problem using the relevant theoretical basis. To answer the problem, the legal material that has been systematized is then assessed so that it can answer correctly the meaning and position and implications of international law (formed by the international community consisting of countries).

DISCUSSION

The rapid development of science and technology has not been able to change human life to be safe and comfortable (secure and prosperity). On the other hand, poverty and destitution, ignorance, disease outbreaks, oppression, seizure of natural resources, food and water scarcity, energy scarcity will continue to be a source of problems that trigger disputes, conflicts or wars between groups and between countries. Formation of International Human Rights Law Internationally, human rights are included in the international legal system (formed by the international community consisting of states).

The State Forms a Legal System.

The state has an important role in shaping the legal system through customs, international agreements, or other forms such as declarations or technical instructions. Then the state declares its agreement and is bound by the international law. In human rights, what is protected can be in the form of individuals, groups or property. The state or state officials as part of the state have an international obligation to protect citizens and their property. International Human Rights Standards are established and developed in various international forums. The process of establishing this standard is carried out by representatives of countries in international forums through a long process and for a long period of time. This formation process not only discusses the form and substance of the draft declarations and agreements that will be agreed upon but also discusses in detail the articles and words of the contents of the agreement which are then agreed to become international agreements by countries.

In the UN system, each representative of the UN members is invited to carry out preparations and negotiations related to the establishment of international human rights standards. This is done so that all views from different countries with different legal systems can be accommodated in the draft agreement or declaration. In discussing the draft, in-depth research and long debate were carried out until the final text of the agreement and declaration was agreed upon. Even though in the end, as in international treaties, further action is needed from countries to sign, ratify or accede and transform it into national law from the treaty.

Some of the United Nations Agencies related to Law Enforcement and Establishment of International Human Rights Standards:

1. The United Nations General Assembly

The United Nations General Assembly is one of the main organs of the United Nations in which every member country of the United Nations is represented in it. The authority of the UN General Assembly related to human rights is to make recommendations in the form of resolutions, which among others produce Resolution A/RES/217, concerning the Universal Declaration of Human Rights, and the authority to create subsidiary organs which then form the Human Rights Council. via Resolution A/RES/60/251.

2. United Nations Economic and Social Council

The United Nations Economic and Social Council, like the United Nations General Assembly, is the main organ of the United Nations. Its task is to provide assistance to the United Nations General Assembly for increased cooperation in the economic and social fields. One of the bodies under the Economic and Social Council is the United Nations Commission for Human Rights, which was later replaced by the UN Human Rights Council. Most international human rights treaties, such as the

International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are treaties that resulted from by this UN organ.

3. The United Nations Human Rights Council

The UN Human Rights Council, is a UN organ established based on UN General Assembly Resolution A/RES/60/251, which replaced the position of the UN Human Rights Commission. Its main task is to follow up on human rights violations that occur in the world. The position of the Human Rights Council is as an auxiliary body of the UN General Assembly.

4. Sub-Commission on Promotion and Protection of Human Rights

5. Periodic Congresses on the Prevention of Crime and the Treatment of Offenders

Sources of International Human Rights Law

Human rights norms and standards are derived from international law. The sources of international law as stated in Article 38 paragraph 1 of the Charter of the International Court of Justice consist of 3 main sources and 2 additional sources. The sources of the law are:

1. Law of International Agreements International treaties are agreements made by members of the international community consisting of countries, aiming to establish law so that it has legal consequences. The form can be in the form of a covenant, convention, agreement and others.
2. Customary International Law International custom (Customary International Law) is international custom between countries in the world, is a general practice that is accepted as 'law'.
3. General Law Principles General Law Principles are general legal principles that exist and apply in the national laws of countries in the world. This principle underlies the positive legal system and legal institutions that exist in the world.
4. Judges' Decisions International court decisions are an additional source of law from the three main sources of law above. This court decision is binding only on the disputing parties. However, the decision can be used to prove the existence of international legal rules regarding a case, which is based on the three main sources of law above.
5. Opinions of international legal experts The opinions of leading international legal experts are the results of research and writings that are often used as guidelines to find out what constitutes international law. However, this opinion does not constitute a law. In international law as well as in international human rights law, there are several forms of legal products, including:
 - a. Resolution is a decision taken by a body in an international organization in this case is the United Nations. At the United Nations there are General Law Principles, which are general legal principles that exist and apply in the national laws of countries in the world. This principle underlies the positive legal system and legal institutions that exist in the world.
 - b. Two resolutions are very important, the first is the resolution produced by the UN General Assembly. This resolution has no legal force although there are several quite authoritative resolutions such as the Resolution on the Universal Declaration of Human Rights. Both resolutions were issued by the UN Security Council. UN Security Council resolutions have legal force, where UN member states must follow the contents of the resolutions issued by the UN Security Council.
 - c. Conventions are international treaties that already have legal force. Conventions have various names such as Covenants, Pacts, Agreements, Charters and others.
 - d. Protocols and Annexes are explanations or further rules of Conventions or international treaties. The Protocol and Annex do not stand alone in their implementation, because they are closely related to the parent agreement.

Human Rights Law Instruments

In the Charter of the United Nations (UN), the commitment to fulfill, protect human rights and respect basic human freedoms is universally reiterated, including in Article 1 (3): "To promote international cooperation in solving international problems in the economic field. , social, cultural and humanitarian aspects, and promote and enhance respect for human rights and fundamental freedoms for all without distinction of race, sex, language or religion. This commitment was then followed up by the United Nations through the establishment of legal instruments that regulate human rights as follows: :

1. *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights (UDHR) was a major step taken by the international community in 1948. The norms contained in the UDHR are international norms agreed and accepted by countries in the world through the United Nations. The Universal Declaration of Human Rights is a framework of human rights objectives that is designed in a general form and is the main source for the formation of two human rights instruments, namely: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

2. *The rights contained in the UDHR are the realization of the basic rights contained in the United Nations Charter, for example (related to law enforcement) Articles 3, 5, 9, 10 and 11 of these articles respectively stipulate the right to life, the right to freedom and personal security, prohibition of torture and other cruel, inhuman and degrading punishments, prohibition of arbitrary arrest, the right to justice, the right to the presumption of innocence until proven guilty, and the prohibition of retroactive punishment. Overall, the UDHR is a guideline for law enforcers in carrying out their work.*

3. *International Covenant on Civil and Political Rights*

More clearly and in detail in the International Covenant on Civil and Political Rights, which entered into force internationally since March 1976. This Covenant regulates the right to life The right not to be tortured, treated or punished in a cruel, inhuman or degrading manner. personal security The right not to be imprisoned solely on the basis of inability to fulfill contractual obligations The right to equality before courts and judicial bodies and the right not to be punished with retroactive penalties in the application of criminal law.

4. *The Covenant has been ratified by more than 100 countries in the world. Indonesia also acceded to it or ratified it through Law no. 12 of 2005, thus binding the government and its officers. The implementation of the Covenant is overseen by the Human Rights Committee.*

5. *International Covenant on Economic, Social and Cultural Rights*

This Covenant came into force in January 1976. Indonesia through Law no. 11 of 2005 ratified it. The reason for the need to consider the rights in this Covenant is that the Law is not Cruel, Inhuman and Degrading to Human Dignity (Covenant against Torture) which came into force in January 1987. Indonesia ratified this Convention through Law no. 5 of 1998. This convention further regulates what is contained in the Covenant on Civil and Political Rights.

6. *This Convention requires States to take effective legislative, administrative, legal or other measures to:*

- a. prevent acts of torture, expulsion, return (refouler), or extradition of a person to another country if there are strong enough reasons to suspect that the person will be in danger (because of being the target of torture),
- b. ensure that everyone who claims that he or she has been tortured in an area of jurisdiction has the right to complain, ensuring that his/her case is examined promptly by the competent authorities impartially.

- c. ensure that the complainant and his witnesses are protected from any ill-treatment or intimidation as a result of the complaint or testimony they give.
- d. ensure that victims receive compensation and (the right to) fair and proper compensation. This Convention is supervised in its implementation by the Committee against Torture (CAT), which is formed based on the rules contained therein.
- e. Convention on the Elimination of All Forms of Racial Discrimination (International Convention on the Elimination of All Forms of Racial Discrimination)
This convention came into force in January 1969 and was ratified by Indonesia through Law no. 29 of 1999. There is a prohibition against all forms of racial discrimination in the political, economic, social and cultural fields. In addition, this Convention also guarantees the right of everyone to be treated equally before the law without distinction of race, color, origin and ethnicity. The Convention also establishes a Committee on the Elimination of Racial Discrimination, which oversees its implementation.
- f. Convention on the Elimination of All Forms of Discrimination against Women. This convention came into force in September 1981 and was ratified by Indonesia through Law no. 7 of 1984. Since its entry into force, this convention has become an international instrument that eliminates discrimination against women in the political, economic, socio-cultural, and civil fields. This Convention requires that States take all appropriate means and without delay to implement a policy that eliminates discrimination against women and provides opportunities for them to enjoy human rights and basic freedoms on the basis of equality between men and women. In practice, this Convention also regulates the establishment of the Committee on the Elimination of Discrimination against Women (CEDAW).
- g. Convention on the Rights of the Child
The Convention on the Rights of the Child came into force in September 1990 and was ratified by Indonesia through Presidential Decree no. 36 of 1990. In this Convention the state must respect and guarantee the rights of every child without discrimination of race, color, sex, language, religion, political or other opinion, nationality, national or social origin, property, disability, birth or other states. States should also take appropriate steps to ensure that children are protected from all forms of discrimination or punishment based on the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members. The Convention also establishes the Committee on the Rights of the Child (CRC) to oversee the implementation of the contents of the Convention.
- h. Convention relating to the Status of Refugees
This Convention came into force in April 1954. Indonesia has not ratified this Convention even though it faces many refugee problems. Refugees are distinguished by the term "internally displaced person" or refugees who move regions within one country. Refugees in this convention are defined as those who leave their country for fear of being tortured for reasons of race, religion, nationality, political opinion or membership of a particular group, cannot or do not want to return because of fear.

The Refugee Convention defines four human rights principles in dealing with refugees, namely:

- 1) Equality of rights, the absence of alienation of their rights, the universality of their rights, the right to seek and obtain asylum from punishment.
- 2) Non-binding Legal Instruments
- 3) Code of Conduct for Law Enforcement Officials

The United Nations General Assembly in 1979 passed resolution 34/169 on Guidelines for Implementation for Law Enforcers. This guideline provides direction for law enforcers in carrying out their duties. There are eight articles that regulate the responsibilities of law enforcement, namely, the protection of human rights, the use of force, the handling of confidential information, the prohibition of torture and other cruel, inhuman and degrading punishments, protection of the health of prisoners, eradication of corruption, and respect for laws and regulations.

4). Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

These principles were adopted by the United Nations in 1990, emphasizing that the use of force and firearms can only be carried out if necessary and in accordance with the main tasks and functions regulated by legislation.

5). Declaration on the Protection of All Persons from Enforced Disappearance

This declaration was adopted by the UN General Assembly in December 1992. It contains 21 (twenty one) articles which regulate the prevention of acts of detention without a clear purpose or as crimes against humanity. This declaration requires the existence of legislative, administrative, legal and other effective measures to prevent and eliminate acts of enforced disappearance.

6). Declaration on the Elimination of Violence against Women

The United Nations in 1967 adopted the Declaration on the Elimination of Discrimination against women. The declaration contains the rights and obligations of women based on equal rights with men, and states that necessary steps should be taken to ensure their implementation. This declaration became the basis for the drafting of the Convention on the Elimination of All Forms of Discrimination against Women.

7). Declaration on Human Rights Defenders

This Declaration was adopted by the United Nations General Assembly in 1998. The Declaration on Human Rights Defenders provides protection for human rights defenders in carrying out their activities. This declaration does not establish new rights but rather provides guidance for human rights defenders regarding their work. Underlined the duties of the state in fulfilling human rights, as well as the responsibilities that must be carried out by human rights defenders, while also explaining the relationship between human rights and the national law of a country. It is emphasized that human rights defenders carry out their activities in peaceful ways.

8). Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

The Principles on the Prevention and Effective Investigation of Unlawful, Arbitrary and Sumir Death Penalties are the principles recommended by the United Nations Economic and Social Council in May 2003. These principles provide guidance for law enforcement in bringing perpetrators to justice. criminal act. These principles emphasize the importance of oversight (including clarity in the chain of command) of law enforcement agencies. These principles also explain in detail the guarantee of the fulfillment of the right to life. Human rights are rights inherent in every human being and are as old as human civilization, however in the future human rights will also be a source of problems in relations between countries, because for subjective reasons from humanitarian considerations a country is "justified to intervene" against a countries accused of committing crimes against humanity. This is known as "humanitarian intervention".

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