

Protection of Human Rights in The Framework of International Law

Lukman Gultom^{1*}, Charlie Alfredo Tambunan², Bertrand Silverius Sitohang³

^{1,2,3} Universitas Katolik Santo Thomas

lukmangultom1636@gmail.com

Abstract

Human rights (HAM) are fundamental rights inherent to all individuals simply by virtue of being human. These rights are universal, inalienable, indivisible, interconnected, and interdependent. The responsibility to respect, protect, and fulfill human rights typically falls on the state, including measures against violations by private entities. Human rights encompass civil and political rights, as well as economic, social, and cultural rights, and are essential to global political, economic, and cultural power dynamics. Despite global efforts to uphold human rights, there are significant challenges, such as political turmoil and enforcement issues in various countries, including the ongoing violations in Palestine and setbacks in Indonesia due to declining democracy, government suppression of criticism, and excessive use of authority by law enforcement. This research aims to explore the development of human rights in international and Indonesian law and understand their relevance in a global context. Utilizing a qualitative approach, data was collected from literature and official documents, analyzed descriptively to highlight patterns, relationships, and implications. The study underscores the need for harmonization of laws, budget allocation for human rights implementation, and addressing legal challenges in the digital era. This research provides insights into the integral components of human rights, factors contributing to their expansion and commitment, and practical solutions for future protection.

Keywords

Human Rights; Human Rights Protection; International Law

Introduction

Human rights (HAM) are a legal and normative concept which states that humans have rights that are inherent to themselves because they are human. Human rights apply anytime, anywhere and to anyone, so they are universal. Human rights are in principle inalienable, indivisible, interconnected and interdependent. Human rights are usually addressed to the state, or in other words, it is the state that carries the obligation to respect, protect and fulfil human rights, including by preventing and following up on violations committed by the private sector. In modern terminology, human rights can be classified into civil and political rights relating to civil liberties (e.g. the right to life, the right not to be tortured, and freedom of expression), as



well as economic, social and cultural rights relating to access to public goods. (such as the right to adequate education, the right to health, or the right to housing).

Human rights are an integral component of political, economic and cultural power in globalization. The protection of human rights is no longer seen as a national issue, but also of a global scope. Several factors contribute to the expansion and commitment in global human rights agendas, namely: The formation of global institutions that care about the protection of human rights. The increasing acceptance of interdependent rights and indivisibility, where violations of human rights in one country will have implications for people in other countries. Emphasis on upholding democracy which is considered important for realizing international peace. The view that concern for human rights is facilitated by market-based economic development. Human rights in the international world are experiencing a decline or setback, many countries are experiencing chaos, especially regarding the enforcement of human rights. There were many rebellions carried out by the masses. The Palestinian state whose people have not received human rights (especially the right to live) because of attacks carried out by Israeli Zionists, and there are still many countries that experience similar things regarding human rights enforcement (Balkin, JM, '2016).

Human rights in Indonesia are also experiencing a setback. However, human rights in Indonesia are experiencing a setback not solely because Indonesian people lack respect for each other, and are selfish about their own rights, resulting in the failure to fulfill the rights of other people. However, due to several factors why Indonesia experienced a setback in matters of human rights, namely: The decline in democracy in Indonesia, starting from the politics of hatred in the name of religion and nationalism (Kälin & Künzli, 2019). This is done by irresponsible individuals to encourage people to hate those who are different from the rest of society. The government seems to be anti-criticism which worsens human rights in Indonesia, for example in the case of insulting/criticizing the president, it seems to be protecting the government rather than providing guarantees for the public to provide criticism without being threatened by legal threats. The police and military still use their authority excessively, the government is ideologically biased. From the perspective of international law, human rights can be limited or reduced under certain conditions. Restrictions must usually be determined by law, have a legitimate purpose, and be necessary in a democratic society. Meanwhile, reductions can only be carried out in emergencies that threaten the "life of the nation" and even the outbreak of war does not fulfill this condition. During war, international humanitarian law applies as *lex specialist*. However, a number of rights must not be waived under any circumstances, such as the right to be free from slavery or torture (McGregor et al., 2019).

PROBLEM STATEMENT

Based on the description of the background above, the author formulates several important things which are considered problems which will be the starting point for discussion in the research, namely as follows:

1. How is the development of Human Rights in international and Indonesian law?
2. What is the concept of Human Rights (HAM) and its relevance in the global context?

RESEARCH OBJECTIVES

This article aims, among other things, to:

1. To find out how human rights have developed in international and Indonesian law.
2. To understand the concept of Human Rights (HAM) and its relevance in the global context.

RESEARCH BENEFITS

It is hoped that this article will provide benefits, namely:

1. Enriching concepts in international law related to state sovereignty, human rights, and legal and normative concepts.
2. To know the integral components of human rights.

3. Know the factors that contribute to expansion and commitment.

Literature Review

Human rights in the international world are experiencing a decline or setback, many countries are experiencing chaos, especially regarding the enforcement of human rights. There were many rebellions carried out by the masses. The Palestinian state whose people have not received human rights (especially the right to live) because of attacks carried out by Israeli Zionists, and there are still many countries that experience similar things regarding human rights enforcement. Human rights in Indonesia are also experiencing a setback. However, human rights in Indonesia are experiencing a setback not solely because Indonesian people lack respect for each other, and are selfish about their own rights, resulting in the failure to fulfill the rights of other people (Dijk & Hoof, 2023). However, due to several factors why Indonesia experienced a setback in matters of human rights, namely: The decline in democracy in Indonesia, starting from the politics of hatred in the name of religion and nationalism. This is done by irresponsible individuals to encourage people to hate those who are different from the rest of society.

The government seems to be anti-criticism which worsens human rights in Indonesia, for example in the case of insulting/criticizing the president, it seems to be protecting the government rather than providing guarantees for the public to provide criticism without being threatened by legal threats. The police and military still use their authority excessively, the government is ideologically biased. From the perspective of international law, human rights can be limited or reduced under certain conditions. Restrictions must usually be determined by law, have a legitimate purpose, and be necessary in a democratic society. Meanwhile, reductions can only be carried out in emergencies that threaten the "life of the nation" and even the outbreak of war does not fulfill this condition. During war, international humanitarian law applies as *lex specialis*. However, a number of rights must not be set aside under any circumstances, such as the right to be free from slavery or torture. Human rights in a global perspective | National Commission on Violence Against Women Library.

Methodology

This research on Human Rights (HAM) uses a qualitative approach to understand human rights phenomena from a legal and social perspective in depth. Data was collected through literature studies and official documents. Literature studies include literature, legal documents, reports from human rights institutions, scientific articles and related books, while official documents include constitutions, laws, government regulations and documents from international organizations such as the UN (Prayuda et al., 2023). Data analysis was carried out using a descriptive analytical method, which includes systematic description and analysis of patterns, relationships and implications of data to understand the development of human rights, the challenges faced and their relevance in the global context. The discussion focuses on the development of human rights in international and Indonesian law as well as the concept of human rights in the global context. Conclusions and recommendations are prepared based on data analysis to provide an overall picture and practical solutions for protecting human rights in the future. Data validity was maintained through triangulation, and this research complied with research ethical standards, maintaining the privacy and confidentiality of information.



This method is expected to make a significant contribution to the understanding and development of human rights at the international and national levels.

Discussion

A. BASIC CONCEPTS OF HUMAN RIGHTS ACCORDING TO INTERNATIONAL LAW

International legal instruments do not provide a literal definition of human rights. However, Article 1 of the Universal Declaration of Human Rights ("UDHR") states: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. This article is interpreted to mean that all humans are born free and have the same dignity and rights. Humans are gifted with reason and conscience and should associate with each other in a spirit of brotherhood. Apart from that, the definition of human rights is implicitly regulated in the preamble/consideration of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified in Indonesia Law 12/2005, namely "... these rights derive from the inherent dignity of the human person" which means rights These rights (HAM) originate from the inherent or inherent dignity of human beings.

B. INTERNATIONAL LEGAL FRAMEWORK PROTECTING HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievement for all people and all person. nation. This treaty for the first time establishes universally protected human rights and has been translated into more than 500 languages. The UDHR is widely acknowledged to have inspired, and paved the way for, the adoption of more than seventy human rights treaties, which are now in permanent application at global and regional levels (all of which contain references to these treaties in their preamble). at the UN General Assembly, 66 countries expressed their agreement, only 2 countries refused (Nigeria and Togo). Meanwhile, 38 representatives of countries from Eastern Europe and Afro-Asia did not vote (abstained) on additional provisions regarding individual rights to submit complaints.

The General Assembly declares this Universal Declaration of Human Rights to be the standard of common achievement for all people and all countries, with the aim that every individual and every organ of society, keeping this Declaration always in mind, will strive through teaching and education to promote respect for these things. rights and freedoms and through progressive measures, national and international, to ensure universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of the territories under their jurisdiction.

C. IMPLEMENTATION OF HUMAN RIGHTS IN INTERNATIONAL LEGAL PRACTICE

To measure government performance regarding the obligation to implement the fulfillment and protection of human rights, we need to define what the government needs to do to implement rights and then compare this with the commitment and capacity to do so. This commitment and capacity can be seen from the efforts made by the government and their achievements. Therefore, we are required to be able to formulate indicators that can assess the level of the government's willingness and ability to fulfill its obligations. The government must



also move away from the tendency to only play at the formal legal level or stop at normative or political aspects and move towards real or substantial commitments that are realized through steps such as:

- a. Carrying out harmonization of regulations and laws by revising or repealing regulations or laws that have the potential to violate human rights and making laws that support the realization of rights;
- b. There is a budget allocation for the implementation of human rights. The budget allocation for the implementation of human rights shows that the government is giving priority to the implementation of human rights;
- c. In particular, regarding the fulfilment of eco-social rights, there needs to be concrete steps that can be accessed and enjoyed by the community, especially marginalized groups and others.

Implementation of the fulfilment and protection of human rights can now also be used as a basis for legitimizing government power. In this way, the government continues to be encouraged to carry out its obligations to guarantee the people's rights to obtain prosperity through joint efforts called 'development'. In this concept, development is no longer limited to its definition as a government program (let alone ideology), but as part of democratic national activities to fight for the realization of freedom from wants.

D. CHALLENGES AND CONTRVENTIONS IN INTERNATIONAL LAW AND VARIOUS COUNTRIES

International human rights law plays an important role in preventing and addressing crimes against humanity. The legal framework it provides forms the basis for prosecuting those responsible for such crimes. The Genocide Convention (1948) specifically addresses the crime of genocide, while the ICC Statute broadens its scope to include other crimes against humanity. International human rights law also establishes principles of accountability and redress, which empower the international community to hold perpetrators accountable for their actions and provide justice for victims. This role extends to the recognition of individual criminal responsibility, ensuring that even high-ranking officials are not immune from prosecution for their involvement in crimes against humanity. The International Criminal Court (ICC), founded in 2002, plays a critical role in prosecuting individuals responsible for heinous crimes, including genocide, war crimes, and crimes against humanity. The ICC's involvement has shed light on past atrocities and provided an opportunity for victims to seek justice. Effective international cooperation is essential in combating trafficking in persons, and countries must ensure that their domestic laws are aligned with international legal standards for prevention and intervention in trafficking in persons (Schutter, 2019). The adoption and implementation of related international instruments such as the Palermo Protocol, a supplement to the UN Convention Against Transnational Organized Crime, and the Protocol to Combat Trafficking in Persons, which complements the UN Convention Against Transnational Organized Crime, is necessary to combat trafficking in persons.

Challenges of Social and Legal Implementation

Implementing legal solutions to overcome the challenges of protecting Human Rights (HAM) in the digital era is often faced with a number of complex challenges. Experts have identified several challenges in implementing this legal solution, the explanation regarding this according to the experts is as follows:

1. Legal Gaps Between Countries: Differences in data protection regulations and laws and internet regulations between countries can make it difficult to enforce cross-border laws in cases of digital human rights violations;



2. Technological Complexity: Digital technology that continues to develop rapidly can make it difficult to keep up with technological developments and adapt regulations in an effective way;
3. Inequality of Access: Not all individuals or communities have equal access to digital technology, which can create inequality in access to human rights protection;
4. Privacy Issues: Effective legal solutions often must take into account differences in the privacy standards desired by individuals and companies;
5. Legal Uncertainty: Unclear regulations or conflicts between legal jurisdictions can create legal uncertainty in terms of protecting human rights in the digital era;
6. Free Speech Issues: Implementation of legal solutions that focus on strict enforcement of questionable or illegal content may raise questions about free speech and censorship;
7. Technology Company Resistance: Some technology companies have strong economic interests in collecting and exploiting personal data, which may create resistance to stricter regulation;
8. Multistakeholder Approach: Bringing various parties, including governments, companies, and civil society, to participate in the process of developing and implementing legal solutions requires complex coordination (Fitzpatrick, 2018).

These challenges reflect the complexity of human rights protection issues in the digital era. Implementing effective legal solutions requires wise planning, cooperation and adaptation in the face of technological developments and social change.

CASE STUDY

The analysis is based on all legal considerations in the form of evidence and also the judge's confidence at the appellate level, so the Bandung High Court judge is confident in imposing the death penalty. If examined further, there are several legal reviews and arguments that strongly support not applying the death penalty/penalty to the defendant "Herry Wirawan" in this case. Based on Article 7 of Law Number 26 of 2000 concerning Human Rights Courts, serious human rights violations include crimes of genocide and crimes against humanity. A crime against humanity is an act committed as part of a widespread or systematic attack where it is known that the attack is directed directly against the civilian population, in the form of:

- a. Murder;
- b. Destruction;
- c. Slavery;
- d. Forced eviction or relocation of residents;
- e. Deprivation of liberty or other arbitrary deprivation of physical liberty which violates (the principles of) the basic provisions of international law;
- f. Torture;
- g. Rape, sexual slavery, forced prostitution, forced pregnancy, forced driving or sterilization or other equivalent forms of sexual violence;
- h. Persecution of a particular group or association based on political, racial, national, ethnic, cultural, religious, gender or other reasons that are universally recognized as prohibited according to international law;
- i. Enforced disappearance of people; or
- j. The crime of apartheid.

Conclusion

Human rights (HAM) are a legal and normative concept which states that humans have rights that are inherent to themselves because they are human. Human rights apply anytime,



anywhere and to anyone, so they are universal. Human rights are in principle inalienable, indivisible, interconnected and interdependent. In general, international law is defined as a collection of rules and regulations that are binding and regulate relations between countries and other legal subjects in the life of the international community. Implementing legal solutions to overcome the challenges of protecting Human Rights (HAM) in the digital era is often faced with a number of complex challenges. Protection of human rights from an international legal perspective involves a series of legal instruments that aim to ensure recognition, respect and fulfilment of the basic rights of every individual throughout the world. With an international legal framework that protects human rights, basic concepts according to international law, and the implementation of human rights. Through analysis of all legal considerations.

References

- Balkin, JM, '2016 Sidley Austin Distinguished Lecture on Big Data Law and Policy: The Three Laws of Robotics in the Age of Big Data' (2017) 78(5) OhioStLJ 1217Google Scholar, 1219.
- Dijk, P. Van, & Hoof, G. J. H. Van. (2023). *Theory and practice of the European Convention on Human Rights*. books.google.com.
https://books.google.com/books?hl=en&lr=&id=vMb7EAAQBAJ&oi=fnd&pg=PR3&dq=protection+of+human+rights+in+the+framework+of+international+law&ots=9TvWK1F4k-&sig=KU99Tpd_cQ34QWGui_FjBC-vXN4
- Fitzpatrick, J. M. (2018). *Human rights in crisis: the international system for protecting rights during states of emergency*. books.google.com.
https://books.google.com/books?hl=en&lr=&id=I08rEAAQBAJ&oi=fnd&pg=PP5&dq=protection+of+human+rights+in+the+framework+of+international+law&ots=JEaB8sQUdx&sig=b7RfBGkzU_XHwNJyiAhjmQFA6as
- Kälin, W., & Künzli, J. (2019). *The law of international human rights protection*. books.google.com.
<https://books.google.com/books?hl=en&lr=&id=gverDwAAQBAJ&oi=fnd&pg=PP1&dq=protection+of+human+rights+in+the+framework+of+international+law&ots=N9DSXq5MHm&sig=Z2-orafDw1YMNpsXPgqFCs09lL0>
- McGregor, L., Murray, D., & Ng, V. (2019). International human rights law as a framework for algorithmic accountability. *International & Comparative Law*
<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/international-human-rights-law-as-a-framework-for-algorithmic-accountability/1D6D0A456B36BA7512A6AFF17F16E9B6>
- Prayuda, M. S., Juliana, J., Ambarwati, N. F., & ... (2023). Students' Writing Error in Parts of Speech: A Case Study of EFL Students. *Jurnal Educatio FKIP*
<https://www.ejournal.unma.ac.id/index.php/educatio/article/view/4419>
- Schutter, O. De. (2019). *International human rights law*. books.google.com.
<https://books.google.com/books?hl=en&lr=&id=F7-kDwAAQBAJ&oi=fnd&pg=PR11&dq=protection+of+human+rights+in+the+framewor>



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b2&sig=3dVbrFWmPWYvmHVxgeyMyBOamOI
