

Respect and Protection of Human Dignity in Human Rights Law in Emergency Situations in International Law and its Relation to Customary Values in Indonesia

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Abstract

In the context of an emergency situation such as a social conflict or war, such respect and protection must also be extended to those who are on the opposite side of us. The concept of respecting and protecting human dignity is an idea that has existed for a long time and has become an integral part of human civilization to show that the concept of respecting and protecting human dignity is universal. local customs and wisdom. This research problem on how the development of respect and protection of human dignity in emergency situations in international law and how the efforts of the International Committee of the Red Cross (ICRC) in seeking international law affinity in the above context with customary values. 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 First, Over time, the concept of respecting and protecting human dignity has also become an inseparable part of international law, Second, that the concept of respecting and protecting human dignity is an idea that has existed for a long time and has become an integral part of human civilization, Third, each regulation, which is developed in a simple manner, will be complemented by relevant religious customs and norms that are present in various forms in Indonesia where there is a wealth of relevant local traditions, known as adat originating from a rich cultural heritage and diverse influences.

Keywords

international humanitarian law;
human rights law; human
dignity



I. Introduction

Human Resources (HR) is the most important component in a company or organization to run the business it does. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired (Shah et al, 2020). The development of human resources is a process of changing the human resources who belong to an organization, from one situation to another, which is better to prepare a future responsibility in achieving organizational goals (Werdhiastutie et al, 2020).

Ideas about respect and protection of human dignity in emergency situations, including especially when armed conflict, is a fairly old idea. The idea has developed since thousands of years ago since the various ancient civilizations that existed in the world. Over time, these ideas were formulated in various relevant international legal regimes. Specifically, the Humanitarian Law regime and the Human Rights Law regime are two international legal regimes that mostly encapsulate these ideas into various legal

instruments within each regime. However, this is not widely known by many parties who actually think that the above idea is a "modern invention" by only a few countries, especially after World War II. Interestingly, not only is this idea not new, the essence of the concept of protecting human dignity is also very universal and is very likely to be found in various customs and cultures in the world. This article has two main parts of the problem, namely; First, this article will briefly review how the development of respect and protection of human dignity in emergency situations in international law. Second, this article will describe the efforts of the International Committee of the Red Cross (ICRC) in seeking the linkage of international law in the above context with customary values. This article will briefly review how the development of respect and protection of human dignity in emergency situations in international law. Second, this article will describe the efforts of the International Committee of the Red Cross (ICRC) in seeking the linkage of international law in the above context with customary values. This article will briefly review how the development of respect and protection of human dignity in emergency situations in international law. Second, this article will describe the efforts of the International Committee of the Red Cross (ICRC) in seeking the linkage of international law in the above context with customary values.

II. Review of Literature

This research was conducted using a normative juridical research method by conducting a comprehensive study based on laws and regulations as well as empirical juridical research, namely conducting an assessment based on observations of handling respect for and protection of human dignity in emergency situations, including in particular during armed conflict.

This research is 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 carried out an assessment so that it can answer correctly the meaning and position and legal implications of the State Policy in the Indonesian constitutional system.

III. Result and Discussion

If it is associated with the theory of the rule of law, several expert opinions on the rule of law will be described. In our constitution it is stated that Indonesia is a country based on law (Rechtstaat), not based on mere power (machtsstaat). This is clearly stipulated in Article 1 paragraph (3) of the 4th amendment of the 1945 Constitution which states "The State of Indonesia is a state of law". . The provisions of the article are the constitutional basis that Indonesia is a country based on law and the law is placed as the only rule of the game in the life of society, nation and state (supremacy of law).

According to Oemar Seno Adji (1977:74) that "The rule of law is our system of government, this is explained by our Constitution. It contains "safe guards" regarding the human personality so that it should not be violated, in addition to showing the desire to

balance the interests of the community that are protected as well. He aspires that "dignity of men" can be enjoyed by everyone, he upholds human rights among which "free opinion" and "free expression" are fundamental and essential for a democratic life in a state of law. Therefore, all aspects of life both in the social, political, cultural, economic, and so on are regulated and regulated by law, so that all problems or problems that arise in people's lives are resolved according to applicable law. .

An expert on the concept of the rule of law (rechtsstaat) according to the Continental European school is Julius Stahl. His ideas and opinions regarding rechtsstaat are an improvement of Immanuel Kant's view on the concept of the rule of law. In this case, the elements contained in the rule of law in the sense of Rechtsstaat are:

First, the recognition of human rights (grondrechten);

Second, the separation of powers (scheiding van machten);

Third, government based on law (Wetmatigeheid van het bestuur); and

Fourth, administrative justice (administratieve rechtspraak).

Meanwhile, the concept of The Rule of Law that developed in England as stated by AVDicey, that the rule of law in this concept contains three elements, namely:

- a. Supremacy of Law, the rule of law, meaning that the one who has the highest power in the state is the law (sovereignty of law).
- b. Equality before the law, Equality in legal standing for everyone.
- c. The constitution is not a source of human rights, if human rights are placed in the constitution it is only as an affirmation that these human rights must be protected.

The concept of rechtstaat and the rule of law are both conceptions of the rule of law in the sense of our language in Indonesia. Rechtstaat is the concept of the rule of law according to the European version and tradition. However, the notion as it is understood today is different from the classical period. Likewise, the concept of the rule of law, which is more or less also a conception of the rule of law according to the Anglo-American version and tradition, has also developed its meaning from time to time.

Regarding respect and protection of human dignity in emergency situations is a fairly old idea. This is recognized by scholars of international law, one of whom is Judge Weeramantry. This part of this article uses Judge Weeramantry's view as a starting point for a review of the development of respect for and protection of human dignity in international law. In 1996 when the International Court of Justice was facing a question from the United Nations General Assembly regarding the validity of the threat to use or use nuclear weapons, Judge Weeramantry issued a dissenting opinion in the case. Basically, he emphasized that the concept of elementary considerations of humanity is a very ancient and central concept in respecting and protecting human dignity.

3.1 Civilizations, traditions, and cultures related to respecting and protecting human dignity.

Although in the dissenting opinion, Judge Weeramantry was faced with questions related to nuclear weapons, the basic essence of his view was the affirmation that international law is also rooted in respecting and protecting human dignity. He then emphasized that the concept of respect and protection of human dignity is not only limited to those who are on the same side as us. In the context of an emergency situation such as a social conflict or war, such respect and protection must also be extended to those who are on the opposite side of us. In addition, he also draws a common thread that the concept of fundamental humanitarian considerations in international law today is actually a concept that has been known for a long time by various civilizations and cultures in the world.

These great civilizations and cultures all have similar expressions or positions regarding the limits on the extent to which one can act against or against one's enemy. As an illustration in the context of nuclear weapons, Hakim Weeramantry takes the example of how the traditions of the South Asian region react to hyper-destructive weapons. In the ancient South Asian tradition that is more than 3,000 years old as contained in the Ramayana story, it is said that weapons that can destroy the enemy as a whole should not be used.

Narrated in the Ramayana, when Lakhsmana, Rama's half-brother, advised him to use a new weapon that "could destroy all ethnic groups of the enemy, including those who cannot take up arms", Rama emphatically refused to use the weapon. In particular, Rama said that the laws of battle since ancient times forbade mass destruction.

Judge Weeramantry also emphasized the same thing when he quoted the story "Mahabharata: Arjuna, as narrated in the Mahabharata, chose not to use weapons that can destroy excessively because of two basic considerations, namely; First, the use of such weapons is immoral. Second, the use of these weapons was contrary to the teachings of religion or the laws of combat that existed at that time. Similarly, ancient Egyptian civilization also insisted that enemy prisoners should be fed and watered, the sick should be treated, and bury the dead. Continuing his efforts to convey that basic humanitarian considerations in emergency situations are an important part of International Law, Hakim Weeramantry also expanded his reference to several religious teachings, particularly Islam, Christianity, and Buddhism. In Islamic law, it is stated that those who are deprived of their liberty or prisoners of enemies must be treated humanely and with respect.

Furthermore, in the Christian tradition, the Second Lateran Council in 1139 stated that there were several types of weapons, such as city siege devices, which were prohibited because they were deemed inconsistent with the concept of respect for human dignity. So, based on the brief review above, we can clearly see that the concept of respecting and protecting human dignity is an idea that has existed for a long time and has become an integral part of human civilization.

3.2 Development of the concept of respect and protection of human dignity in international law

Over time, the concept of respecting and protecting human dignity has also become an inseparable part of international law. In fact, Professor Ian Brownlie states that humanity is the source of international law. As a branch of international law, Humanitarian Law is the main entry point in this context. This section of the article briefly explores the inclusion of the concept of fundamental humanitarian considerations in international law, including in particular humanitarian law. We can see the application of basic humanitarian considerations in the context of international relations and law in the mid-19th century. During the Crimean War of 1855, the use of sulfur as a weapon was proposed. The same thing was proposed by the Union Forces in 1862 during the United States Civil War. However, both proposals were ultimately rejected and sulfur was not used as a weapon in either situation.

Furthermore, in 1863 there were two important events that were closely related to the basic affirmation of the affirmation of basic humanitarian considerations in international law, namely; First, the issuance of the Lieber Code by the United States Government during the Civil War. The Lieber Code, which is a general instruction for the United States armed forces, sets the principle of humanity as the main pillar. Second, in the same year Henry Dunant and four other Swiss founded the forerunner of what we know today as the ICRC. As an international humanitarian organization mandated to support countries in

developing Humanitarian Law, of course the birth of the ICRC in 1863 further emphasized the position of fundamental humanitarian considerations in the development of international law.

Then in 1864 for the first time multilaterally an international treaty governing the protection of war victims was agreed upon by 12 countries and later had 57 states parties. This international agreement is then known as the Geneva Convention of 1864. Then, in 1868, the Declaration of St. Petersburg on humanitarian grounds prohibited the use of explosive bullets in war. More than three decades later, basic humanitarian considerations are reaffirmed in the Hague Convention of 1899 which regulates respect for the law and customs of war. In particular, the Hague Convention 1899 is a significant momentum because of the Martens Clause in the Preamble of the international treaty. Martens Clause itself is currently accepted as a main pillar in terms of fighting actions for which there are no specific rules, then these actions must be carried out based on the laws of humanity and the requirements of public conscience.

During the diplomatic conference in The Hague in 1907, the formulation of the Martens Clause was again used in the final document of the conference in the form of the 1907 Hague Convention. When the founding states of the United Nations (UN) in 1945 agreed to the UN Charter, basic humanitarian considerations became one of the pillars in the Charter. Saving and defending humanity can be said to be one of the main goals of the establishment of the United Nations. Included in the 1948 United Nations Universal Declaration of Human Rights, respect for human dignity is the first point in the document. This shows the centrality of the concept of respect for human dignity based on the spirit of brotherhood in the human rights regime. Then in 1949, when the four Geneva Conventions were adopted, and in 1977, upon the adoption of two Additional Protocols to the 1949 Geneva Conventions, Countries agree to adapt the Martens Clause into these international instruments. Even in the same year that the four Geneva Conventions were adopted in Switzerland, the International Court of Justice based in The Hague issued a judicial decision in the Corfu Channel case. which basically underscores the importance of fundamental humanitarian considerations which are even more important in times of peace.

The Corfu Channel case is a dispute between the United Kingdom and Albania regarding alleged violations of sovereignty by the British Navy against Albania's territorial waters. One of the views of the International Court of Justice in this case is that when Albania does not provide notifications about the position or location of sea mines to countries, this is not in line with basic humanitarian considerations. On another occasion, the International Court of Justice also reaffirmed the central position of the concept of fundamental humanitarian considerations in international relations and law. We can also see the affirmation of respecting and protecting human dignity in Resolution XXIII which was adopted at the International Conference on Human Rights in Tehran in 1968. In that Resolution, the countries present at the conference above agreed that even in times of emergency such as war, all parties in act must be in accordance with humanitarian law and the requirements of the public conscience. Likewise in various international treaties related to human rights, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which integrally place the respect and protection of human dignity as the objectives of the two international treaties. As stated in the previous section, the concept of respecting and protecting human dignity during an emergency situation which has its roots in various civilizations, traditions, and cultures in the world today has become an integral part of international law. So, both in Humanitarian Law and in Human Rights Law, respect and protection of human dignity is a necessity.

3.2 “Human Values”: Seeking International Law Linkages with Indigenous Values in Indonesia regarding Respect and Protection of Human Dignity.

Although it is clear to some that the concept of respecting and protecting human dignity is a legacy of human civilization at large, there is still a view that this concept because it is currently an integral part of international law is only a modern invention of "Western Culture". Aiming to show that the concept of respect and protection of human dignity is universal, since the late 1990s the ICRC has begun efforts to seek and affirm the linkage of international law with customary values and local wisdom in the above matters. The ICRC together with relevant experts have been and are currently conducting research on this link. In 1998, the ICRC conducted the search in the context of the country of Somalia and has published its findings. Then, in 2009 the ICRC instituted a similar effort in the context of the Pacific region. Furthermore, in early 2020 the ICRC institution has started a similar search process in the context of traditional values and local wisdom that exist in Indonesia. However, what has been done in the context of Somalia and the Pacific region has focused solely on the war situation. Through the “Human Values” program which was launched at the beginning 2020, ICRC Jakarta, together with the Indonesian Red Cross (PMI) and related experts, began an effort to find the link between traditional values and local wisdom regarding respect and protection of human dignity in all situations, including emergency situations, such as social conflicts, natural disasters, or wars. Specifically, the “Human Values” Program focuses attention on the following 10 Values:

- a. Physical and psychological integrity must be respected.
- b. Sexual dignity must be guaranteed.
- c. Children must be protected.
- d. The wounded and sick must be cared for and protected.
- e. Health facilities and personnel must be protected.
- f. Humanitarian assistance for the needy must be facilitated.
- g. Access to education should be facilitated. Educational facilities must be respected.
- h. Individual and community property, including places of worship, must be respected.
- i. Persons deprived of their liberty must be treated with humanity and dignity.
- j. The body must be treated with dignity.

An early reference to Humanitarian Values rather than Humanitarian Law itself will create a simple framework relating to the basic principles of Humanitarian Law that can be taught outside law school. This program deliberately underlines positive values such as respect for physical/psychological integrity rather than related offences (bad treatment). Each regulation, which is developed simply, will be complemented by relevant religious customs and norms that are present in various forms in Indonesia where there is a wealth of relevant local traditions, known as adat originating from a rich cultural heritage and diverse influences.

Elements of local customs that underline, among others, respect for the enemy, the dignity of women, and others. Although hampered by the COVID-19 pandemic, the initial search process has been carried out in several areas in Indonesia, such as Maluku, West Sumatra, South Sulawesi and South Kalimantan. Based on the initial findings obtained until the end of 2020, there is a link between customary values in Indonesia and the concept of respect and protection of human dignity in international law. The following are some examples of such links with Minang and Maluku traditions/cultures. The First Value in the “Human Values” Program is respect for physical and psychological integrity. This value can also be found in Minang traditions and culture in the form of the proverb "Gadang jan malendo, Long don't run over" (Big don't hit, Long don't run over). According

to our initial study, this proverb can also be interpreted as a form of prohibition to carry out torture or ill-treatment of people under its control, and is also related to the Ninth Value related to humane treatment of people who are deprived of their liberty. In addition, Minang traditions and culture also recognize the concept that everyone has the freedom to move, whether in times of peace or emergency.

Meanwhile, related to the Fourth Value which focuses on helping and caring for those who are injured and sick, Minang traditions and culture also recognize the same thing. Minang proverb "Sakik samo is dazzled; Dead samo dijanguak; Nan rusuah samo seduced; Dikaba good advice; Dikaba badass behambau." which means "It hurts to see; Died as visited; The rioters are the same as persuaded; On the good news appealed; On the scattering of bad news" is clearly a wedge regarding help to those who are injured and sick. In the context of Maluku traditions and culture, the concept of "pela and gandong" also has a wedge in respecting and protecting human dignity. As a system in Maluku tradition and culture, pela and gandong" promote brotherhood between groups regardless of social, religious or other background. Based on this main understanding, "pela and gandong" are also recognized as having a central idea which in general puts forward human values in the form of "the life of the Basudara people".

When linked to Humanitarian Values, this central idea can be sufficient to support not only the First to Fourth Values, but also to the Sixth Values related to the facilitation of humanitarian assistance. Reflecting on the brief examples above, we believe that similar findings will be obtained in various traditions, cultures, and customary values that exist in other regions of Indonesia. In developing this program in the future, the ICRC plans to continue its search efforts in other areas of Indonesia, as well as confirming what has been obtained at an early stage. Taking into account the existing limitations, the other areas referred to are Bali (Balinese customs and traditions), West Kalimantan (Dayak customs and traditions), West Java (Sundanese customs and traditions), Central Java/Yogyakarta/East Java (Javanese customs and traditions), Aceh (Aceh customs and traditions), and the Nusa Tenggara region. In addition, the "Human Values" program is specifically intended to be understood more broadly for the general public, not only for certain categories of community groups (for example: legal experts, policy makers, academics, female students, military, and others). This program also does not aim to replace the dissemination material on International Humanitarian Law that is conveyed to members of the armed forces, relevant policy makers, and others. In another sense, the "Human Values" program complements the existing tools in disseminating the values of respect and protection of human dignity more broadly in all circumstances. Of course, input and suggestions from various parties, including readers of this media, will be very helpful in developing this program. Comprehensive inputs and suggestions regarding related customary values will also be very useful in aligning the final product of "Human Values". In the end, this program is expected to contribute to the understanding of the concept of respect and protection of human dignity for various groups and the general public.

IV. Conclusion

This research has briefly reviewed the concept of respect and protection of human dignity in international law. As a concept that has existed in various human civilizations in the world since ancient times, respect and protection of human dignity has finally become an inseparable part of international law. Over time, International Law, especially Humanitarian Law and Human Rights Law has a main pillar in the form of human values

where these values are universal. Although this understanding is understood by some groups, there are still parties who view that basic human values are only inherited from certain cultures. Through several efforts over the past 20 years, The ICRC has endeavored to demonstrate that the respect and protection of human dignity as understood in international law is also found in the traditions and cultures of the world.

Suggestion

It is recommended that the ICRC "Human Values" Program seeks to find a wedge between traditional and customary values in Indonesia and the concept of respecting and protecting human dignity. Through these efforts, it is hoped that the concept of respect and protection of human dignity can encourage more recognition and understanding of the concept in society.

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