

Juridical review of cases of human rights violations against the Uighur Ethnic and its resolution mechanisms in the perspective of international law

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ABSTRAK

Pelanggaran Hak Asasi Manusia adalah perbuatan individu atau kelompok, termasuk penyelenggara negara, yang dengan sengaja atau tidak sengaja mengabaikan, membatasi, atau mencabut hak asasi manusia. Pelanggaran HAM yang dilakukan pemerintah China terhadap etnis Uighur juga terjadi di Xinjiang. Adanya pelanggaran HAM di Xinjiang merupakan upaya pemerintah China untuk memberantas budaya asli suku Uighur. Juga dianggap pemberontak, Uighur telah bergabung dengan jaringan teroris internasional. Akibatnya, pemerintah China telah menerapkan beberapa tindakan dan kebijakan yang tergolong pelanggaran HAM. Kajian ini membahas dua isu utama, yaitu bagaimana kasus pelanggaran dan kejahatan terhadap kemanusiaan di Xinjiang dalam perspektif hukum internasional dan bagaimana mekanisme penyelesaian pelanggaran HAM yang terjadi melalui perspektif hukum internasional. Penelitian ini merupakan penelitian hukum normatif, sumber yang digunakan adalah bahan hukum primer, sekunder, dan tersier. Teknik pengumpulan data dilakukan dengan menggunakan teknik studi kepustakaan, dan analisis data akan dilakukan dengan menggunakan pendekatan yuridis normatif atau melihat hukum sebagai norma yang berlaku di masyarakat. Hasil dari penelitian ini adalah bahwa diantara kebijakan tersebut telah menimbulkan beberapa pelanggaran hak asasi manusia, mulai dari pelanggaran hak sipil dan politik, kejahatan terhadap kemanusiaan, diskriminasi ekonomi, sosial, dan budaya, hingga pelanggaran hak asasi manusia terhadap perempuan dan anak. Untuk itu, sangat diperlukan penyelesaian pelanggaran HAM di Xinjiang melalui instrumen hukum internasional yaitu Piagam PBB dan Statuta Roma 1998. Langkah yang dapat diambil untuk menyelesaikan pelanggaran HAM di Xinjiang adalah melalui penyelesaian konflik secara damai atau melalui pengadilan internasional.

Kata Kunci: Pelanggaran HAM, Xinjiang, Etnis Uighur

ABSTRACT

Human Rights Violation is the act of individuals or groups, including state authorities, who intentionally or unintentionally disregard, restrict, or revoke human rights. Human rights violations committed by the Chinese government against ethnic Uighurs are also occurring in Xinjiang. The presence of human rights violations in Xinjiang is an attempt by the Chinese government to eradicate the Uighur ethnic group's indigenous culture. Also deemed to be rebels, Uighurs have joined international terrorist networks. Consequently, the Chinese government has implemented several actions

Keywords: Human Rights Violation, Xinjiang, Uighur Ethnicity

and policies that are classified as violations of human rights. This study discusses two main issues, namely how cases of violations and crimes against humanity in Xinjiang in the perspective of international law and how the mechanism of settlement of human rights violations that have occurred through the perspective of international law. This research is normative legal research, the sources used are primary, secondary, and tertiary legal materials. The data collection technique is carried out using a literature study technique, and data analysis will be carried out using a normative juridical approach or seeing the law as the norm in society. The results of this study are that among these policies have led to several violations of human rights, ranging from violations of civil and political rights, crimes against humanity, economic discrimination, social, and cultural, to human rights violations against women and children. For this reason, it is very necessary to resolve human rights violations in Xinjiang through international legal instruments, namely the United Nations Charter and the 1998 Rome Statute. Steps that can be taken to resolve human rights violations in Xinjiang are through peaceful resolution of the conflict or through international courts.

I. INTRODUCTION

One of the cases of human rights violations that are still happening today is the violation committed by the Chinese government against the Uighurs. Ethnic Uighurs are one of the ethnic minorities in the Xinjiang region, which is located in the far western part of China. This ethnic group is in an autonomous status area called Xinjiang-Uighur, where the majority of the people are Muslims. The Uighur community speaks the local and Turkmen languages, and it is not uncommon to find Uighurs writing in Arabic. The existence of human rights violations by the Chinese government stems from China's desire to break the beliefs and customs of the Uighur ethnic group. Several human rights violations were also present, starting from religious restrictions, torture, murder, forced displacement of the population, ethnic discrimination, and other human rights violations. The presence of these human rights violations is certainly motivated by several aspects, one of which is the emergence of fear of cultural shift because Uighurs themselves are the fourth largest ethnic group in East Turkistan ([Saragih, 2015](#)).

The United Nations Human Rights Committee once stated that there are one million Uighur Muslims detained by the Chinese government without any legal process. Member of the United Nations Committee on the Elimination of Racial Discrimination, Gay McDougall, said that the Uighur autonomous region had been transformed into a camp. Prisoners are required to swear an oath of allegiance to the Chinese president and are also forced to shout the Communist Party slogan. In addition, the United Nations also received news that life in camps designated for Uighur Muslims did not provide good food, and there were reports of torture received by detainees ([Florence, 2018](#)).

Fundamentally, what the Chinese government has done to the Uighurs is a violation of human rights carried out in a systematic and massive way. Ethnic Uighurs get oppression,

discrimination, persecution, and unfair treatment by the Chinese government. The presence of policies by the Chinese government tends to discriminate against ethnic Uighurs, such as the massive policy of relocating the Han ethnic population to the Xinjiang region. Systematically, the Han ethnic will be more successful because it is given a high position and full power unlike the Uighurs.

The policy is not to wear the hijab, not to be bearded, to the prohibition of fasting in the month of Ramadan also found by the Uighurs. Ethnic Uighurs are also required to use the official Chinese language (Putonghua) which actually Uighurs have their own local language (Dewi, 2020). Education for Uighurs is also not found properly, Uighur children are prohibited from preserving their original culture, even school-age children will be placed in a shared dormitory, which is given strict supervision. There is such treatment that has an effect on the mental and character of the children themselves, which will be difficult to accept how they should be found at an early age. (Sudwort, 2019).

Forced sterilization by the Chinese government is also applied to ethnic Uighur women, the presence of forced sterilization has resulted in the birth rate of Uighurs decreasing every year. The location of the violation of human rights is in this rule only applies to the Uighur ethnicity without involving all ethnic groups in China (Salsabila, 2020).

Due to the presence of several cases of human rights violations in Xinjiang by the Chinese government against ethnic Uighurs, this requires further attention. Mutual concern by the international community is really needed for the Uighurs. The cases of human rights violations that occurred there have not yet found a point of peace, so the author tries to analyze further how cases of violations and crimes against humanity in Xinjiang China in the perspective of International Human Rights, after that the author will examine the appropriate way based on international law to resolve the conflicts present in Xinjiang.

II. METHOD

The research method is the process of collecting data for research as well as the procedures for how the research process is carried out, while the type of research in this research is a type of normative legal research. Normative legal research is a type of research that examines how legal norms can apply and become a reference in people's behavior (Efendi, 2016). Sources of secondary data and primary, secondary, and additional or tertiary legal materials are the sources of data and legal materials used by the authors to conduct this research. The method of data collection was carried out by literature study, tracing reference sources, in the form of books, journals, research reports, and other supporting documents.

III. RESULT AND DISCUSSION

3.1. Cases of Human Rights Violations and Crimes in Xinjiang from an International Human Rights Perspective

Human rights have been an important discussion for a long time, in fact there have been many opinions and theories that discuss how human rights are to be protected and treated. Call it the difference of opinion between adherents of universalism theory and cultural relativism theory. Those who agree with the theory of universalism will emphasize that humans have rights that are inherent naturally, while for those who adhere to the theory of cultural relativism will have the opinion that human rights are different, limited to the area of residence and culture. What is the right of one community group is not necessarily the right of another community group (Ardani, 2017). Apart from all the theories above, the most important point is that the international community really cares about all forms of international human rights violations cases, and so is what is happening in Xinjiang, among the cases of human rights violations in Xinjiang are as follows.

3.1.1 Cases of Human Rights Violations in Xinjiang

The Chinese government's policy towards ethnic Uighurs over concerns about cultural developments that are not in line with communist habits, has led to the presence of several cases of human rights violations in the Xinjiang region. The most prominent violations are religious restrictions, such as the prohibition of fasting, naming children related to Islamic names, to the ratification of anti-extremism legal products (Saragih, 2015). All violations of religious freedom are certainly contrary to article 2 of the Universal Declaration of Human Rights and article 18 paragraph 1 International Covenant on Civil and Political Rights which explains that everyone has the right to freedom of thought, conscience and religion of their own choice.

Human Rights Watch once wrote a 53-page report entitled "Break Their Lineage, Break Their Roots" which means break their lineage, break their roots. The report contains some documentation and also an explanation of what the Chinese government has done to the Uighurs (Ariyanti, 2017).

Injustice in the eyes of the law is also felt by ethnic Uighurs, arrests in the Xinjiang region reached 21% in 2017 and nearly 1 million people were detained in 300 to 400 detention facilities throughout the Xinjiang region, this detention has been going on since 2017. severe cases without a clear legal process beforehand, so that there is no legal certainty in proving the detention (Yang, 2021).

This is of course contrary to Article 14 paragraph 1 International Covenant on Civil and Political Rights explains that everyone has the same position before the court, determines all forms of accusations, rights and obligations, lawsuits, so that everyone has the right to a fair and open examination, and continues in paragraph 2 which explains that everyone accused of committing the offense shall be entitled to be presumed innocent until evidence of such guilt is found according to law. The Chinese government has also carried out the death penalty for political prisoners in Xinjiang. According to Amnesty International, Xinjiang is the only province in China that allows the death penalty for victims of political prisoners (Saragih, 2015).

The Chinese government also has a program that collects every DNA (Deoxyribo Nucleic Acid) of Uighurs with the aim that all residents' activities will be monitored and controlled, this DNA collection program only involves Uighurs, while other Chinese citizens are not enforced, this is Of course, this creates discrimination for freedom of activity for ethnic Uighurs (Wee, 2019).

The Chinese government has also committed human rights violations that have an economic, social and cultural impact on the Uighurs. Discrimination in the economic aspect by the Chinese government against Uighur Muslims, began with a program since the 1950s where the Chinese government carried out a massive migration program of Han ethnic groups to move to the Xinjiang region. Ethnic Han who moves in Xinjiang will get a job and also high power. While ethnic Uighurs will only be residents who work as the working class (Zulkarnain, 2020).

Even though the international rules contained in Article 7 International Covenant on Economic, Social and Cultural Rights explained that the States Parties to the Treaty recognize the right of everyone to the enjoyment of just and favorable working conditions, but with the reality that is happening in the Uighurs, the international rules are very different. China's treatment has also been contrary to the principle of equality of rights. Thus, there should be no distinction between the Uighurs and Hans (Mendila, 2015).

In addition to economic and social discrimination, the Uighurs also get cultural discrimination, the Uighurs are restricted by the Chinese government from studying their history and culture, the reason for doing this is because the Chinese government is afraid of a cultural shift. Some of the cultural discriminations are, the presence of a ban on religious restrictions, a ban on the use of local languages in schools where children study, to the presence of camps to deepen communist ideology. The existence of economic, social, and cultural discrimination causes this to be inconsistent with the rules in article 22 Universal Declaration of Human Rights which "Every person, as a member of society, has the right to social security and has the right to the realization of economic, social and cultural rights which are indispensable for the dignity and free development of his person, through national efforts and international cooperation, and in accordance with the regulations and the resources of each country".

The economic, social, and cultural discrimination that occurs in Xinjiang has certainly violated several international human rights principles, one of which is the principle of equality. The principle of equality can certainly be interpreted as a guideline that every human being born on this earth makes no difference. Equality gives a signal that every human being should be treated equally (Gunakarya, 2017).

Forced sterilization of ethnic Uighur women is also carried out on a massive scale by the Chinese government, this is a form of emphasis on regeneration born of the Uighur ethnicity. Based on a report from a researcher from China, Adrian Zenz stated that the Chinese government has carried out forced sterilization in the Xinjiang region, the Chinese government has issued a policy for ethnic Uighur women who have had three children to be sterilized. approximately 2500 US Dollars (Salsabila, 2020). The point of the violation of

human rights lies in the enforcement of this forced sterilization policy which only applies to the Uighur ethnic group, while for other ethnic groups it is not enforced. This is also contrary to the Convention on the Elimination of Discrimination Against Women, which has been explained in the Convention, that every woman has the right to be free from practices that are harmful to her, and must admit that sterilization is a practice that is harmful to ethnic Uighur women.

The education sector also cannot properly receive Uighur children, they will be included in boarding schools, this boarding school is presented as an ideal place to engineer a sustainable culture for minority communities. Like the ban on the use of local languages from the school environment. The school for these children is also under very strict supervision by using a 10,000 Volt electric fence to the use of a perimeter alarm. So, with this it will affect the child's character and mental (Sudworth, 2019).

The Chinese government has implemented human rights violations on all fronts for ethnic Uighurs, both to children and adults, even for cases and human rights violations in Xinjiang can already be said to be a form of crimes against humanity that are widely committed and systematic.

3.1.2 Crimes Against Humanity

Crimes against humanity (crimes against humanity) are regulated in Article 7 of the Rome Statute which defines crimes against humanity as acts committed as part of a widespread or systematic attack where it is known that the attack was directed against the civilian population.

Conceptually, in international human rights, human crimes are part of the most serious crimes to be brought to the attention of the international community. Cases of crimes against humanity that occurred in Xinjiang can be seen in 1997 with the Chinese government's "Strike Hard" policy of punishing death and also arresting thousands of ethnic Uighur Muslims, and at that time China made it the country with the highest position in human rights violations. (Fathurrahman, 2019).

The Chinese government's violations which are also classified as other crimes against humanity are the presence of concentration camps that torture ethnic Uighurs. Ethnic Uighurs are held in several camps on the grounds that they do not forget the country's culture. The Chinese government says these camps are places that educate Uighurs to avoid the mindset of terrorism. But what is conveyed in reality is very different, the camp presented is not in accordance with what it should be.

Prisoners are required to swear an oath of allegiance to the Chinese President, and are forced to study all things related to the Communist Party every day. These camps are referred to as "Re-education" for the Uighurs, the system being used is coercion and aggression by the civil service and government. The prohibition against meeting family members and coercion to adhere to the communist system and not to believe in God applied during the detention process. These camps are widely present in the Xinjiang region which are aimed at one ethnicity, during the process in detention there are often

deliberate attacks such as murder, slavery, forced transfers, deportations, to sexual crimes (Goddess, 2020).

If viewed from the perspective of International Human Rights, China's policy of presenting "Re-education" camps is already classified as an act of crimes against humanity directed at the Uighur ethnic group. Because Article 7 of the Rome Statute has classified several groups of actions that can be directed at crimes against humanity, and among these several classifications of actions, the Chinese Government has been present and committed during the detention period of ethnic Uighurs.

Coupled with the presence of several cases of human rights violations committed by the Chinese government, this shows that the elements of crimes against humanity have been fulfilled, where there are widespread or systematic attacks. This attack applies to ethnic Uighur civilians, from children to adults, through strict rules, policies of discrimination against one ethnicity, to government treatment that hurts ethnic Uighurs, so that a resolution is urgently needed for human rights violations in the region Xinjiang.

3.2. The Mechanism of Resolving Human Rights Violations of the Uighur Ethnic in the Perspective of International Law

The mechanism for resolving human rights violations against the Uighur ethnic group in the perspective of international law, there are two steps that can be taken, including:

3.2.1 Peaceful Resolution of Human Rights Violations of the Uighurs

Article 33 of the United Nations Charter has explained that every settlement of a case should use peaceful means first before bringing it into the realm of law, including through negotiation, investigation, mediation, conciliation, arbitration, legal settlement through regional bodies or arrangements, or by other peaceful means of their own choosing."

After trying to analyze how the dispute resolution mechanism is through peaceful means, the most likely thing to be implemented is to use mediation. Mediation is a method of settlement with a negotiation method that is included by a third party who acts as a mediator between the Uighur ethnic group and the Chinese government (Susanti, 2014).

Concrete steps that have high effectiveness can be taken with the role of other countries or international organizations in mediating for human rights violations in Xinjiang. Other countries, for example, based on the provisions of Article 51 of the UN Charter, have formulated how other countries are involved in conflict resolution. This article can be used as a reference for other countries to participate in resolving cases that occurred in Xinjiang, as long as it is carried out in a collective way and in accordance with the approval of the United Nations Honorary Council. However, until now the role of other countries in human rights violations in Xinjiang has only been in the form of criticism, so it has not had much effect on the presence of cases of human rights violations in Xinjiang (Amalia, 2020).

Other mediating roles can also be taken by international organizations, such as WUC (World Uighur Congress) for example. WUC is an international umbrella organization that houses organizations supporting Uighurs in the world. WUC acts as a representative of

the interests of the Uighur community in Xinjiang. WUC is a legal organization that has collaborated with the United Nations and the European Union, and WUC's policies are stated in the mission statement Declaration on December 6, 2010 (Wahyuni, 2019).

In fact, several steps have been taken by WUC in an effort to stop human rights violations, for example from several reports that have been carried out by WCU. It's just that the report does not have a strong effect on the Uighurs, seeing that there should be something further done by this Non-Governmental Organization (INGO). Taking into account that one of the goals of WCU's presence is to determine the fate of the Uighur community, there is no harm in taking that far-reaching step to mediate with the Chinese government, to represent the Uighur ethnic group.

Comparison between the United Nations, other countries, and international organizations that have a strong opportunity to take on a role in resolving human rights violations against the Uighur ethnic group, either through mediation or other peaceful steps, is considered the most appropriate through international organizations, one of which is the WCU. This is because of China's role in the United Nations and the existence of international interests among other countries and the Chinese government. So WCU is expected to be a bridge between the Uighurs and the Chinese government for the realization of a peaceful atmosphere in the Xinjiang region.

3.2.2 Settlement of Human Rights Violations of the Uighur Ethnic Through the International Criminal Court (ICC)

The step to bring cases of human rights violations by the Chinese government against ethnic Uighurs to the International Criminal Court is not as easy as imagined. There are several factors that trigger this to be difficult, among them China is a country that has a veto power at the United Nations.

Reports to the International Criminal Court have also been made by representatives of the Uighur community, but this report was rejected by the International Criminal Court Prosecutor on the grounds that the court's territorial jurisdiction was not fulfilled in connection with the majority of the crimes that have been accused, this is because the Chinese government is not a party to the Rome Statute, This obstacle is the second factor in the difficulty of bringing China to the International Criminal Court (Danomira, 2020).

However, even so, the implementation of the International Criminal Court against countries that have not ratified the Rome Statute has actually been regulated. Based on the 1998 Rome Statute, the International Criminal Court can exercise its jurisdiction over a person who comes from a non-state ratifying the Rome Statute, including first in the case submitted by the UN Security Council to the International Criminal Court, second in the case of citizens of non-state parties committing crimes in the territory or territory of a country that is a member of the 1998 Rome Statute or a country that has accepted ICC jurisdiction in relation to the crime, and thirdly in the case of a non-state party, the state has agreed to exercise jurisdiction in relation to the crimes committed. set out in the 1998 Rome Statute (Dhuara, 2021).

Looking at the three points above, there are possibilities that could happen, even though it looks like there are so many challenges that will be faced later. In the case of the Uighurs, there are several different points of view when bringing this issue to the International Criminal Court. Madelinne Morris has the opinion "that the ICC will act illegally if exercising its jurisdiction over citizens of non-state parties would be contrary to the principle that international courts cannot exercise their jurisdiction over cases concerning the rights or responsibilities of third parties that do not give consent to the matter subject of dispute" (Dhuara, 2021).

The existence of such a response was answered by international legal experts who argued that the country that ratified the 1998 Rome Statute has territorial jurisdiction over all crimes that occur in its territory or territory, and this also applies to any country, whether it has ratified the 1998 Rome Statute or has not ratify the Statute.

With a note that if the crime that has been committed is included in the category of international crime, it is based on the universal principles that exist in international law, all countries have jurisdiction over the perpetrators of the crime and do not need to look at the nationality of the perpetrators of the crime and the area where the crime occurred (Dhuara, 2021).

The International Criminal Court can exercise its authority if the country is in the area where the international crime occurred, and the country is unable to prosecute and does not want to prosecute and does not submit the perpetrator to the ICC, then the ICC can exercise its authority. This authority can also be exercised for countries that have ratified or have not ratified the 1998 Rome Statute.

The legal basis that can be used as a reference for the International Criminal Court in adjudicating countries that are not ratifications of the Rome Statute is present in Article 27, which regulates the application of the Statute equally to everyone without a difference on the basis of official position, whether a head of state or government and parliamentary employee does not. exempting such a person from criminal responsibility provided for in this Statute and the existence of such positions does not constitute an excuse to reduce the sentence and immunity from the special procedural rules relating to these positions under either national or international law does not prevent the ICC from exercise its jurisdiction over the perpetrator of the crime. This article also provides a factor of support for the International Criminal Court to exercise its jurisdiction over citizens whose countries have not ratified the 1998 Rome Statute.

Looking at what has happened, the ICC is indeed the last step that can be taken as an effort to resolve human rights violations in Xinjiang, even though it faces several obstacles. However, this does not close everything, because until now the international community is still aggressive in providing news on cases of human rights violations that afflict the Uighur ethnic group. Likewise, the International Criminal Court, even though it has rejected reports by the Uighur community, is still trying to analyze cases of violations that have occurred in Xinjiang.

IV. CONCLUSION

Religious restrictions, injustice in the eyes of the law, socio-cultural economic discrimination, forced sterilization, and bad treatment of children. Is a series of several cases of human rights violations that occurred in Xinjiang, by the Chinese government against ethnic Uighurs. The Chinese government's policy has also been classified as crimes against humanity, where the existence of camps which are considered as places of "Re-education" for ethnic Uighurs, is used with a system of coercion and aggression by civil servants and the government. There are several acts of murder, slavery, forcible transfer, deportation, to sexual crimes, experienced for prisoners of these camps. The settlement of human rights violations by the Chinese government against the Uighurs is a serious step and must be implemented. There are two steps that can be taken, first is through peaceful means, one of which is mediation carried out by international organizations, namely WUC (World Uighur Congress). WUC is considered very appropriate compared to the role of other countries or the United Nations as a mediator for the Uighurs and the Chinese government. The second step is through the International Criminal Court, this step is indeed a bit challenging compared to the first step with China's position as the owner of the veto power and also not a ratifying country to the 1998 Rome Statute. However, based on Universal theory and the existence of rules in the Rome Statute that can punish citizens who are not ratifications of the 1988 Rome Statute, as well as crimes against humanity that have occurred in Xinjiang are considered to be a great hope in resolving this case through the International Criminal Court.

Authors' Declaration

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