

Responsibility of People's Republic of China for Minority Based on ICERD: Uyghur Case

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ABSTRACT

People's Republic of China is allegedly committed racial discrimination toward Uyghurs for the last few years. Uyghurs is one of the minority ethnics who live in Xinjiang Uyghur Autonomous Region (XUAR) China. The Chinese government builds re-education camp for Uyghurs and being detained even imprisoned without a proper legal procedure. The research aims to know the implementation of Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Responsibility to Protect Perspective in Uyghurs case. The study employed normative legal research with Statute Approach and Case Approach. By using qualitative descriptive method, the study elaborated on how China upholds the minority rights through the implementation of ICERD, and how the international law perspective in the context of responsibility to protect Uyghur case is. The result shows that China has not been successfully implementing ICERD toward minority groups because in practice China does racial discrimination toward Uyghurs. Also, China fails to implement the first pillar of Responsibility to Protect (R2P), where China should protect its citizen from any kind of mass atrocity crimes.

Keywords: ICERD, Racial Discrimination, Uyghurs

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1. INTRODUCTION

In recent years, People's Republic of China (PRC) has faced racial discrimination issue about ethnic minority in Xinjiang Uyghur Autonomous Region (XUAR). Since April 2017, around 10 percent of the population in Xinjiang had been detained, imprisoned, even disappeared. They were detained in a camp which they call as "re-education camp", including scholars, students, journalists, and artists (Duara, 2019). The number of detainees continues to increase from 2017 to 2019, up to 1.5 million Uyghurs who are detained in re-education camp (Sintash, 2019).

Uyghurs are indigenous people of Tarim Basin, they are the second largest Muslim in China as a part of minority. XUAR is a territory for Turkic Muslim ethnic with 11 million Uyghurs and 1.6 million Kazakhs. Uyghurs are not ethnically Chinese in that they are more closely related to the Central Asian people. We can find Uyghurs living within the borders of the countries that border Xinjiang, such as Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. They speak Turkic language and use the Arabic alphabet; their language is important to their Muslim heritage and culture (Watch, 2018).

In 2009, it became China's bloodiest incident between Uyghurs and Han Chinese. This incident was occurred in Shaoguan, at Xuri Toy Factory to be exact. On 26 June 2009, six Uyghurs men were accused of raping two Han women, two days later police announced the detention of a worker dismissed from the Xuri Toy Factory who spread the allegation of rape. However, two people of ethnic Uyghur died and more than 118 people were injured because of that allegation (International, 2010).

On 5 July 2009, hundreds of Uyghurs demonstrated at the People's Square in XUAR. The demonstrators protested the authorities who were deemed indecisive after the deaths of Uyghurs workers in Shaoguan. Then, the demonstrators left People's Square and moved to another place in the Southern Part in Urumqi through Nanmen because police were detaining demonstrators. After a few minutes in the Southern part of Urumqi, the police came to give warning such as threw teargas to the demonstrators and fired warning shot into the air.

Nevertheless, the demonstration still continued in a peaceful way and the police began beating and detaining demonstrators and the police also threw stones towards them. This situation was more chaotic when police shot one of the demonstrators who demanded justice for the discrimination that had been occurred. A day later, large numbers of Han Chinese came to Uyghurs region and began retaliating against Uyghurs with knives, sticks, and spiked steel bars. In this incident, some Uyghurs died because of the attacks which were carried out by Han Chinese. 1.300 people were arrested because of religious extremism and terrorism case (International, 2010).

After the China's bloodiest incident, ethnic clashes are getting worse and government surveillance is getting strict towards Uyghurs. Finally, China launched "Strike Hard Campaign against Violent Terrorism" in 2014, consist of three main goals to be eradicated through this campaign namely separatism, terrorism, and extremism with dictated rule of strict, fast, and heavy (Xia, Clemens, & Eve, 2018). Because of this campaign, many Uyghurs were imprisoned on terrorism charges and they did not have proper legal rights where they were not permitted to challenge the decision, and they would be quickly put on trial with sentenced to prison. Their lawyers could not protest the violation of their client's rights, there were many terrorism cases that did not completely prescribe court procedures, and usually the decisions had been decided before the trial was carried out with the government or the official who decided the sentence, not the judge (Watch, Human Rights, 2018).

One million Uyghurs in re-education camp have been reported to the international human rights group. They are United Nations (UN) and others such as Amnesty International dan Human Rights Watch. Another is the UN Committee also put attention to the discrimination acts against minority in China. It is the UN Committee on Economic, Social, and Cultural Rights (CESCR) and the UN Committee on the Elimination of Racial Discrimination (CERD) who focus on the issue of culture, health, employment, education, and also the standard of living. While, the assessment of the existence of ethnic minority in re-education camp Xinjiang has been begun by The United Nations Universal Periodic Review (UPR). However, Chinese Government strictly prohibited the assessment (International, Amnesty, 2010). Based on those facts, the researcher is interested to evaluate the implementation of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in China and in finding out the Responsibility to Protect Perspective towards racial discrimination in Uyghur case.

2. RESEARCH METHODS

The research was conducted under normative legal research method, by using statute approach and case approach to find the truth, whether the existing law is appropriate with the rule of law, whether the command or prohibition is in line with the principles of law, and whether an action is in accordance with the legal principles (Efendi & Ibrahim, 2016). The statute approach was conducted by highlighting specific regulations such as Responsibility to Protect (R2P), United Nations Declaration on the Elimination of All Forms of Racial Discrimination, The Constitution of the People's Republic of China, and the Law of the Ethnic Regional Autonomy, it is categorized as statute approach, while reviewing others related case is categorized as case approach (Diantha, 2016). The data will be collected through library research, and will be analyzed using qualitative method.

3. RESULTS AND DISCUSSION

3.1. Responsibility to Protect (R2P)

In the 20th century, the world was shocked because of millions of people had been killed. Those crimes are crimes against humanity, mass extermination, ethnic cleansing, war crimes. In 1945, when United Nations (UN) was formed, the international community stated that they will never allow any crimes against humanity to be committed again. However, in the 1990s the case of mass murders occurred in Bosnia and Rwanda (Outreach Programme on the Rwanda Genocide and the United Nations, 2014). After various humanitarian cases that cannot be prevented by international community, the principle of the Responsibility to Protect (R2P) was created. The idea of Responsibility to Protect comes from Francis Deng, who was a diplomat from South Sudan and the UN Representative for Internally Displaced Persons. Deng and other experts stated that sovereignty means responsibility (Global Centre for the Responsibility to Protect, 2017).

And Deng's idea that sovereignty is responsibility is used by International Commission on Intervention and State Sovereignty (ICISS). Finally, in 2009, the pillars of responsibility to protect was presented by a Secretary General namely Ban Ki-moon. There are three pillars as the concept of R2P. The first, is the responsibility to protect its population is owned by all states. The state must protect from any kind of mass atrocity crimes. The second, every state as the international community has responsibility to assist every state who has an obstacle to run the first pillar, and the third pillar is the international community has right to take appropriate measure through Security Council, if the state is not willing to implement R2P principle (Genser, 2018).

R2P has special characteristics is narrow but deep which means that is only restricted to the mass atrocity crimes such as war crimes, crimes against humanity, ethnic cleansing and mass atrocity crimes. Whereas, deep refers to actions that can be taken by international community through the UN systems and also action by Security Council to solve those violations (Genser, 2018). Responsibility to Protect (R2P) principle is discussed in the World Summit Outcome 2005. Where all Heads of the State and Government adopted it. There are 50 resolutions that have been adopted by the Security Council regarding responsibility. States have duty to ensure the prohibition of mass atrocity crimes through internationalisation into national law (General Assembly Security Council, 2017).

3.2. International Convention on the Elimination of All Forms of Racial Discrimination

Racial discrimination is an action of distinguish people based on their race, national ethnic, religion, where it has effects on how they get their rights and fundamental freedoms. According to the International Court of Justice, the prohibition of racial discrimination constitutes an erga omnes obligation (Bassiouni, 1996). The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is one of the human rights instruments which develop the norm of the UN Charter where strengthen the respect for human rights and fundamental freedoms for everyone without discriminate them (Office of the High Commissioner for Human Rights, 2012).

On December 21st, ICERD was adopted and entered into force on January 4th, 1969. This convention consists of 181 state parties and 88 signatories. (United Nations Treaty Collection, 1966) According to Dr. J. Craig Venter as the Head of the Celera Genomics Corporation, race is not only about the scientific aspect, but also covers social concept are subjective and social components (Felice, 2002). ICERD condemn racial separation and obliges states parties to punish any racial hatred or any assistance to racist activities, and to prohibit racist organizations both of public and private. Articles 5-7 stipulate responsibilities to protect the equal rights, give compensation to the victims, and combat racial biases through education and others (Banton, 2018).

State must eliminate any laws that create racial discrimination. Aside of that, every state must ensure the rights of non-citizens through the law and its implementation. It is stated in the General Recommendation No. 30 that state must protect non-citizens from discrimination acts, and give chance for having citizenship (Shirane, 2015). To ensure that each states party carry out its obligations, there must be an institution that serves as a special body to examine the program of each state's parties. In 1970, an independent body namely the Committee on the Elimination of Racial Discrimination (CERD), started to monitor the implementation of ICERD. CERD is a committee of experts that was established to monitor the ICERD which is composed of 18 independent experts, these experts will be elected through the secret ballot (Shirane, 2015).

CERD will have two sessions for meeting in a year, that will be conducted in three weeks for each session. Those sessions consist of the consideration of every new state reports, reviewing the implementation of the convention especially for overdue reports, reviewing the procedures of the prevention, and the last session is individual communications (Felice, 2002). Based on the Article 9 (1) of the ICERD, states parties must submit reports for every two years or if the committee request it, because the committee has right to get further information. If the report is more than five years, it will be categorized as an overdue report, and as the consequence the state must allow the committee to examine the country's situation. After that, there will be suggestion and recommendation by the committee (Thornberry, 2005).

CERD also appoint one of its members to become a country rapporteur. The rapporteur will evaluate each report and prepare questions that will be asked to the representative. CERD also invites the delegation from each states party for attending the CERD meeting and there are 30 General Recommendation that have been issued by CERD (Lappin, 2016). However, CERD is not a judicial body, it only assists the state to ensure the implementation of ICERD.

3.3. The Implementation of International Convention on the Elimination of All Forms of Racial Discrimination

China has ratified ICERD on December 29th, 1981. Nevertheless, China make a reservation for one of the articles is Article 22 of the Convention and China will not be bound by it. (United Nations Treaty Collection, 1966) Article 22 regulates the dispute between two or more state parties that can be solved by negotiation and other dispute settlement provided for this Convention. The dispute parties may also refer to the International Court of Justice, or if the dispute parties agreed, they can use another mode of settlement to solve the dispute. Reservation is a statement which is made by a state when signing, ratifying, accepting, approving or acceding to a treaty, where a state wants to modify the legal effect of certain provisions on that treaty. Reservation is regulated in the Vienna Convention on the Law of Treaties (VCLT) 1969 (Neumayer, 2007).

China is a multi-ethnic country with 56 ethnic groups consisting of 55 minority groups. Han is the dominant group taking around 92% of the total populations. (Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organization in Switzerland, 2014). Minority groups need special policy to protect their rights with two crucial goals, that is the right to identify and substantive. The right to identify minorities refer to the various characteristics such as language, culture, race, religion, and ethnicity. The right to substantive equality means minority should be treated alike. Special rights do not mean contradict with equal rights. Actually, special measure for minority groups apply to guarantee the equality and does not allow differential treatment (Henrard, 2007).

Equality and unity for every groups in China have been defined in the Constitution of the People's Republic of China and in the Regional Ethnic Autonomy Law 1984. Where all ethnic in China are equal,

and the state must protect the rights and the interest of the minorities. Also, upholding relationships among all ethnics group. That is why discrimination are prohibited based on the constitution. China's Constitution also combats group of Chauvinism from local and Han ethnic. This action is done for keeping the equality unity for all ethnic groups. However, in practice PRC also oppresses the practice of Islam and categorizes it as separatism. The government is also criminalizing the wearing of veils and other Islam styles such as beard styles, and are using religious ceremony in weddings. The implementation of halal food become one of illegal activities (Roberts, 2018).

3.4. Regional Autonomy Law

Regional autonomy law has an important part in the China's political system. The autonomous area in China are divided into three since 1998, those are regions, prefectures, and counties. Consist of 30 autonomous prefectures, 5 autonomous regions, and 120 autonomous regions. Regional autonomy has function to ensure the political right of minority who take part in political field. In 1954, the Constitution of the People's Republic of China was adopted. And in 1984, the Law of the People's Republic of China on Ethnic Regional Autonomy was established. Regional autonomy law is a special law for minority, focus on the economic, cultural rights, and political matters (Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organization in Switzerland, 2014).

In recent years, there are large numbers of industrial projects in Xinjiang, around 50.000 projects in Xinjiang with total fix assets of 190 billion yuan. Xinjiang becomes the 4th biggest oil producing in China, it also produces cotton and woolen textile. For example, the Southern Xinjiang Railway as a communication facility, the Urumqi General Petrochemicals Factory, the Tacheng Airport, the ethylene project namely Dushanzi General Petrochemicals Factory, and other is Turpan-Urumqi-Dahuangshan Highway (Permanent Missions of the People's Republic of China to the United Nations Office at Geneva and Other International Organization in Switzerland, 2014).

The state also encourages the minority areas to start foreign investment, develop frontier trade based on the local situation, and cooperation in domestic technology. It is a good opportunity for minority area in promoting their economic structure and developing their ability. However, the purpose of those projects is contrary in practical. Han dominate higher position in every project comparing to Uyghurs. Most manager in the state sector in Xinjiang are Han Chinese (Zang, 2012). In addition, the territory of the minority is rich in natural resources. Because of that, the political leaders have reason to maintain good relationship with residents in minority areas. In fact, more than 80 percent of ethnic minority is suffering from poverty (Clothey, 2005).

Although China has great improvement in many sectors, many minority areas are still undeveloped, mostly happened in the western part of China. Where the people's basic needs are not guaranteed, also production and living condition are difficult. Others important aspect is education, that is why China government also consider the education for minority groups. The development of education for all of the element of society in China is very important regarding the improvement of minority groups quality. For example, the state allows the autonomous region to develop their own ethnic education, where the teacher must be able to teach in bilingual in order to learn Chinese language and keep the minority language. However, the policy of bilingual education is failed because in Uyghurs monolingual Chinese education is still implemented (Zang, 2012).

Mandarin Chinese becomes the official language since the Cultural Revolution in the late 1950s, it is implemented in the school as the instruction in minority regions, and the purpose of this language is assimilation. It is contradicted with the Constitution of PRC and the Regional Autonomy Law. Other obstacle is the poverty, where is lacking of infrastructure and lack of bilingual teachers. The State

Education Department Research Center stated that 37.8% of the schools do not have enough desks, 22.3% have unsafe classrooms, and 32.5% did not have enough funds to buy teaching aids in 2003 (Wang, 2009).

3.5. Preservation and Development of Ethnic Minorities Culture

The Chinese Government actions in China are contrary to China's constitution and also violate its obligations under international law. The existence of re-education camp in Xinjiang is violating the right to liberty, because the minority will be detained without reasonable accusation. It is also violating the freedom of thought, expression, and religion. People are forced to go to political indoctrination, and when they are in that camp, they are not allowed to perform their religion (Watch, Human Rights, 2018). China's constitution also guarantees the non-discrimination for national minority groups and prohibitions against torture and other ill-treatment. But those minority rights are violated by the Chinese government through the existence of re-education in Xinjiang. Because of that, the Chinese government has accepted various criticism regarding the re-education camp.

The training in re-education camp included military action, patriotic singing and videos watching, writing personal statement that they will become a new person. They are taught to replace their burkas with modern Uyghur ethnic dress and having a secular lifestyle. The detainees live not in accordance with their religion beliefs. They could shower only once in a week and together with men and women. They are required to learn Chinese language, and they are forced to eat pork, and to drink alcohol as the punishment. They are also forced to replace their loyalty from God to the Chinese state, the reason is that only the government and the party will take care of them (Finley, 2019).

The ethnic violence in the XUAR cannot be shown to foreign correspondent because the internet access is controlled by the government such as, blocking certain sites and monitoring individual activities online (International, Amnesty, 2010). The Xinjiang authorities also collect biometrics data such as DNA samples, fingerprints, the blood types of residents in the age of 12 to 65. These biometrics will be used in passport application process (Watch, Human Rights, 2018). Biometrics data is not enough for the government, and police can monitor a further thing such as households via QR codes where it is attached on the door of every home (Groot, 2019).

There are four kinds of discrimination that happened towards Uyghurs, they are prohibition of Uyghur language use, Uyghur students who are studying abroad must come back to China, the political criminal camp namely re-education camp. Racial discrimination also happened in Mongolian Autonomous Region and in Inner Tibet Autonomous Region. In Mongolian Autonomous Region, all the textbook is standardized where the student is rarely finding history of Mongolia. In fact, the Mongolian middle schools have been merged into Han schools, where they are forced to learn Chinese language that makes them difficult to speak Mongolian. One of the policies of the Chinese government regarding language is allowing the minority to speak with their own language in daily life including in school and political event. However, there is no more translators that is provided in government offices and public service agencies (Southern Mongolian Human Rights Center, 2018).

Uyghurs is not the only ethnic minority who are put in re-education camps, Tibetans and Mongolians are also put in the re-education camps. A historian and author Lhamjab A. Borjigin is prosecuted in the case of separatism and sabotaging national unity after writing his book about cultural revolution (Long, 2018). In 2017, there were two videos showing that Tibetan nuns singing and dancing about loyalty to China. The videos are humiliating and embarrassing them as the nuns (Human Rights Watch, 2018). The Tibetans are also controlled by the government regarding their freedom of movement. In China, there are two systems of passports, the quick one, can only be accessed by Han majority, and the slow one is imposed in minority areas, mostly for Tibetans and another religious

minority. In 2016, there was expulsions in Larung Gar toward Tibetan Buddhist community. The Chinese government implement new administrative control, about 200 Communist Party has taken over all management, finances, security, admissions, also the textbooks (Discrimination, Committee on the Elimination of Racial, 2018).

United Nations Committee on the Elimination of Racial Discrimination has given conclusion regarding racial discrimination in China, in that China is doing wrong action in implementing the policy regarding racial discrimination. The policies for each ethnic group such as Uyghur, Mongolian, and Tibetan are different in practice. The Chinese government should immediately release all detainees in re-education camp and close all political education center. The government should also allow the investigator to visit both Tibet and Xinjiang regions to evaluate the condition.

By doing racial discrimination towards ethnic minorities, China does not run the obligation of R2P, where every state must be responsible and must protect its citizens from various crimes against humanity. China violates ethnic minorities rights by detaining them in re-education camp without proper legal procedures in Xinjiang. Other than that, China also does racial discrimination toward other ethnics in Tibet and ethnic Mongolians.

4. CONCLUSION

People's Republic of China has established Regional Ethnic Autonomy Law in 1984 to achieve equality for minority rights. The Regional Ethnic Autonomy Law is the way of Chinese government to implement ICERD in China. From this Regional Ethnic Law, the Chinese government make some policies regarding education, minority languages, and freedom to keep their religion. However, by seeing the case of Uyghurs, the law has not been successfully implemented. Aside of that, the violation of China to the Uyghurs rights can be categorized as the violation of the ICERD especially when China detains the Uyghur in re-education camp without trial process. China also violates other ethnic minority such as Mongolian ethnics and Tibetans. China does not run its responsibility toward its populations in the case of protection from mass atrocity crimes because China violates its responsibility by doing racial discrimination. Every state must protect its populations from mass atrocity crimes. As a consequence of racial discrimination, the ethnic minorities cannot get their minority rights.

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