



Protection Human Rights Based on The International Covenant on Economic, Social and Cultural Rights

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Abstract

Human Rights which are naturally given by Allah since the birth of every human being into the world, as a right that cannot be changed and revoked by any power. The implementation of human rights must be in accordance with the applicable legal rules within the scope of the international community and the national community in a country. Various applicable international legal rules related to human rights that initiated by the United Nations are already owned by the international community, starting from the establishment of the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Economic, social and cultural rights include the right to work, the right to earn wages and the right to participate in trade unions, social related human rights, for example the right to social security, the right to housing and the right to education and cultural rights are rights related to the culture owned by a society or traditional culture.

INTRODUCTION

Human Rights (HAM) are basic rights owned by every human being that are obtained since birth, because they are given by God the Almighty Creator. HAM as the property of every human being that is inherent in every human being, wherever the human being is without looking at the background of human existence, such as race, religion, gender, ethnicity, skin color, language and so on, therefore no power can revoke it. But it does not mean that with the ownership of these HAM, every human being can or may do whatever they please, because the actions of a person who violates the HAM of others will be categorized as a wrong act. Therefore, the issue of HAM must be regulated in legal regulations, within the scope of the international community and a country.

The United Nations (UN) as an international organization that accommodates countries in the world, has an obligation to promote human rights as stated in the Preamble, and Article 55 point c of the UN Charter. The Preamble to the UN Charter states in the second paragraph, stating that the UN is determined, "... to strengthen belief in fundamental human rights, in the dignity and worth of the human person, in equal rights for both men and women and for all nations, large and small ...". While in Article 55 point c, it states:

"With the aim of creating conditions of stability and prosperity necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations promotes: ...(c) universal respect for human rights

and for their realization and for fundamental freedoms for all, without distinction as to race, sex, language or religion.”

The policy of placing respect for human rights for the first time in the framework of the UN is found in *Universal Declaration on Human Right* (Universal Declaration of Human Rights/UDHR), which was accepted and announced by the UN General Assembly on December 10, 1948 through resolution 217 A (III). This UN Declaration is a common standard for the international community to increase respect for human rights, in taking progressive actions globally and nationally. Universal and effective recognition and respect for human rights are expected to be implemented by making national legal regulations and law enforcement by all UN member states.

The preamble to the UDHR considers that, “*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ... Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,*” which means that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and that Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.¹

Every human being who is born, from that moment on has freely the same basic rights, as stated in Article 1 of the UDHR, which 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.”², which means that all people are born free and have equal dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Various forms of human rights are mentioned in the UDHR, including civil, political, social, economic and cultural rights.

The regulation of human rights under the umbrella of the UN was followed by two important Conventions in 1966, namely *International Covenant on Economic, Social and Cultural Rights* (ICESCR) And *International Covenant on Civil and Political Rights* (ICCPR). The formation of these two Conventions was carried out by a special UN agency called *United Nations Commission on Human Rights* (UNCHR/United Nations Commission on Human Rights), which is a commission that provides human rights protection within the framework of the UN. Article 1 paragraph 3 of the UN Charter states, “*To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*”. This article explains that the purpose of the UN is to achieve international cooperation in solving international problems of an economic, social and cultural or humanitarian nature, as well as in efforts to promote and encourage respect for human rights and fundamental freedoms for all human beings without distinction as to race, sex, language or religion.³

Both human rights provisions, the ICESCR and the ICCPR, were adopted by the United Nations General Assembly on 16 December 1966 by consensus, without any abstentions (General Assembly resolution 2200 A (XXI) of 16 December 1966). The ICESCR entered into force on 3

¹ *Universal Declaration on Human Rights*, Preamble, Par. 1 and 6

² *Ibid*, Article 1

³ Article 1 of the UN Charter

January 1976 and the ICCPR on 24 March 1976. These covenants were the result of long-term negotiations for various human rights to be accepted within the UN framework by the Commission on Human Rights.⁴

ICESCR is one of the international legal rules that regulates various rights related to economic, social and cultural. As stated on the Ontario Human Rights Commission website, *The ICESCR guarantees a comprehensive range of substantive rights including: The right to self-determination (Article 1); Equal rights for men and women (Article 3); The right to work (Article 6); The right to just and favourable conditions of work (Article 7); The rights of workers to organize and bargain collectively (Article 8); The right to social security and social insurance (Article 9) and protection and assistance for the family (Article 10); The right to an adequate standard of living (Article 11) which includes: Adequate food, Adequate clothing, Adequate housing; The right to freedom from hunger (Article 11); The right to the highest attainable standard of physical and mental health, including the right to health care (Article 12); The right to education (Article 13); and The right to culture and to benefit from scientific progress (Article 15).*⁵

DISCUSSION

Understanding Economic, Social and Cultural Rights

ICESCR is an agreement established by the UN regarding issues regarding economic, social and cultural rights, consisting of a Preamble and a body consisting of 31 articles, which came into force on January 3, 1976. ICESCR or hereinafter referred to as the Covenant in its preamble emphasizes that it is the obligation of every country to promote universal respect for the observance of human rights regarding conditions in which all people can enjoy their economic, social and cultural rights.⁶ The preamble, consisting of five paragraphs, agrees that respect for economic, social and cultural rights is implemented in accordance with the principles of the Charter of the United Nations, which recognizes the inherent dignity of every human being and the equal and inalienable rights of all members of the human family as a foundation for the implementation of freedom, justice and peace in the world, and recognizes that these rights derive from the inherent dignity of the human person.

Economic, social and cultural rights are part of human rights. Definition of economic human rights: Economic human rights are rights related to economic activities, labor, the right to obtain work, wages and the right to participate in labor unions.⁷ Economic human rights are basic human rights, which are related to their economic life. Economic human rights are the rights to own, buy and sell, and utilize something. For example, economic human rights are about freedom to buy, economic human rights are about freedom to make and carry out contract agreements, economic human rights are about freedom to own something.⁸ Basic Rights Social basic rights are human rights related to the right to social security, the right to housing and the right to education and cultural basic rights are rights related to the culture of a society or traditional culture. law in court, equal rights in the legal process. Social and cultural basic rights are rights related to society, namely to choose education, the right to develop culture, and so on. For example: The right to get

⁴ Monica Pinto *Professor Emeritat University of Buenos Aires Law School*, Audiovisual Library of Int. Law, Nov. 2020, un.org

⁵ *Ontario Human Rights Commission, Social, Cultural and Economics Rights under International Law*

⁶ Preamble to the Convention paragraph 4

⁷ I Made Subawa, Human Rights in the Economic, Social and Cultural Fields According to the Amendment to the 1945 Constitution, *Regional Daily Journal*, November 9, 2021

⁸ Jonaed Efendi, Ismu Gunadi Widodo, Fifit Fitri Lutfianingsih, *Dictionary of Popular Legal Terms*, p. 165

a decent education, the right to get lessons, the right to choose, determine education, the right to develop talents and interests.⁹

According to *International Justice Resources Center (IJRC)*, “Economic, social, and cultural rights are the freedoms, privileges, and entitlements that individuals and communities require to live a life of dignity. These human rights include the rights to food, housing, health, education, cultural identity, and more. Although some economic, social, and cultural rights cannot be immediately implemented, States that have ratified the relevant treaties nonetheless have the obligation to guarantee these rights”.¹⁰ The translation, Economic, social and cultural rights are the freedoms, privileges and rights that individuals and communities need to live a life of dignity. These human rights include the rights to food, housing, health, education, cultural identity and more. Although some economic, social and cultural rights cannot be implemented immediately, States that have ratified the relevant treaties still have an obligation to guarantee these rights.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

a. Rights and Obligations of each state party to the ICESCR

The provisions in the ICESCR (hereinafter referred to as the Covenant) can be seen as the rights owned by each country as its member and also the obligations imposed on the country. The rights owned by each country party to the Covenant are as stated in Article 1 which explains that all nations have the freedom to determine their own destiny to obtain economic, social and cultural progress, and all nations can, in their own interests, freely manage their wealth and natural resources without reducing the obligations that may arise from international economic cooperation based on the principle of mutual benefit and international law. This article emphasizes the principle of self-determination for each country where the government is responsible for providing the freedom of its people to obtain rights for their welfare.

Economic, social and cultural rights are granted by each country and regulated in their respective national laws without distinguishing between gender, which means that there are equal rights between men and women.¹¹ Every individual is recognized and respected as having the same rights, for example to get a job, wages, education, housing, to be creative in the arts and so on.

The obligations of the state parties to the Covenant are stated, among other things, in Article 2 paragraphs 1 and 2, which reads: “1. *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.* 2. *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*”

This provision confirms that every country has an obligation to act alone or through international cooperation in achieving the fulfillment of economic, social and cultural rights

⁹ Ibid

¹⁰ *Ijrccenter.org, Economic, Social and Cultural Rights –(International Justice Resource Center)*

¹¹ Article 3 ICESCR

without discrimination on the basis of race, color, sex, language, religion and politics. The obligation of the state includes the establishment of national legal regulations related to economic, social and cultural rights and specifically for developing countries must guarantee the implementation of economic, social and cultural rights for foreign citizens in their country. The main point of the obligation according to this article is that the state is obliged to respect the human rights regulated in this Convention, and the certainty of its implementation throughout its territory and for every human being/people without distinction of one another.

The state's obligation to respect human rights related to the same economic, social and cultural rights for men and women is emphasized in Article 3 which reads: " *The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant*", which means that the States Parties to this Covenant undertake to ensure equality for men and women to enjoy the economic, social and cultural rights set forth in this Covenant. Other obligations are as mentioned in article 16, where the State is obliged to submit a report to the Secretary of the United Nations, which will then be forwarded to the Economic and Social Council (ECOSOC), on the steps that have been taken, and the progress that has been achieved in the observance of the rights recognized in the Covenant.

b. Economic, Social and Cultural Rights in the ICESCR

Human rights related to economic, social and cultural rights regulated in the Convention include the right to obtain decent work, the right to join a labor organization/union, the right to social security, the right to education starting from basic education, the right to a decent standard of living individually and in the family, the right to good physical and mental health, the right to participate in cultural life, the right to enjoy the benefits of scientific progress and its applications, the right to benefit from the protection of moral and material interests arising from scientific, literary or artistic works that have been created.

Various human rights as rights regulated in the Covenant related to economic, social and cultural rights, especially starting with the recognition of the right of every nation to self-determination which gives them the freedom to determine their political status, the freedom to achieve economic, social and cultural progress.¹² Even the Covenant explains that every nation has the right to manage every wealth and natural resources they have. Recognition of economic, social and cultural rights regulated in the Covenant is given without discrimination against men and women. The implementation of these rights must be respected in accordance with the provisions of the Charter of the United Nations.

In accordance with the name of this Covenant, the various rights regulated in it can be grouped into 3, namely:

1. Economic Rights:

a) The right to work and earn a decent living.

- I. The right to obtain decent work is regulated in Article 6 paragraph 1 which states, " *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right*", which means that the States Parties to the present Covenant recognize the right to work, including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this

¹² Article 1 ICESCR

right." The recognition of the right to work in the Covenant, gives a broad meaning to humans, where the rights owned are related to the results of the work that every human being has, such as decent wages and in accordance with the results of the work, which are sufficient for the life of the worker and his family.

The work that each individual has must also guarantee safe working conditions, fair wages without discrimination between female and male workers, as regulated in Article 7, which states, " The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Just wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. (ii) A decent living for themselves and their families, in accordance with the provisions of the present Covenant; (b) Safe and healthy conditions of work; (c) Equal opportunity for everyone to be promoted to an appropriate higher level without any consideration other than that based on seniority and ability. (d) Rest, recreation and reasonable limitation of hours of work, and periodic holidays with pay or other compensation on public holidays."

- II. Also related to the basic right to work is the right to participate in the formation of trade union organizations, to be active in their activities and the right to strike. The implementation of these rights in trade unions is carried out in accordance with the laws of each country. In addition, the application of this provision is also excluded for the Armed Forces, Police and Government Officials as regulated in Article 8 paragraph 2 of the Convention, "This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention".

The right to work is stated in the ICESCR, particularly in articles 6, 7 and 8. The ICESCR not only forms the basis for legal recognition of the right to work as a human right, but also provides a broad concept for the right to work itself, which contains not only the obligation for states to guarantee access to employment for everyone, but also details the right of everyone to just and favorable working conditions as follows:

- Fair wages and equal remuneration for work of equal value without discrimination of any kind
- A decent living for the worker and his family
- Safe and healthy working conditions
- Equal opportunities for promotion based on seniority and competence
- Rest periods, recreation and reasonable limitation of working hours and regular paid holidays, as well as remuneration for public holidays.¹³

The use of child and adolescent labor constitutes economic and social exploitation and must be sanctioned, because it is detrimental to their morals or health

¹³ info@komnasham.go.id, *The Human Rights Based Approach to the Localization of SDGs in Indonesia*

or life. Therefore, provisions must be made by the States parties to the Convention regarding the age limit for employment, as explained in article 10 paragraph 3 of the Covenant.¹⁴

b) The right to education and training.

- The right to receive adequate education for children who are the responsibility of their families. The widest possible protection and assistance must be given to the family which is the natural and fundamental group unit of society, especially for its formation and while the family is responsible for its care and education. In addition, every marriage to be entered into must be carried out on the basis of the free consent of the prospective bride and groom, as regulated in article 10 paragraph 1 of the Covenant.¹⁵
- The right to education for the formation and development of the personality is explained in article 13 of the Covenant. Education shall enable everyone to participate effectively in a free society, promoting understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. States shall provide a programme of education, free of charge, beginning with compulsory primary education. Secondary education in its various forms, including technical and vocational education, shall be generally available and accessible to all by every appropriate means. Higher education shall also be made equally available to all on the basis of ability, by every appropriate means, in particular through the progressive introduction of free education. Basic education shall be encouraged or promoted, as far as possible, for those who have not received or have not completed their primary education; the development of a school system at all levels shall be actively pursued, an adequate scholarship system shall be established and the material conditions of teaching staff shall be continuously improved.

c) The right to adequate housing

The basic right to housing must be recognized as regulated in Article 11 which stipulates that everyone must have a decent life including for his family related to the needs of food, clothing and housing and the existence of the state's obligation to guarantee the realization of this right, the state is obliged to improve the methods of production, conservation and distribution of food which can be done by utilizing technical and scientific knowledge, through the dissemination of knowledge about the principles of nutritional science, and by developing or improving the agricultural system in such a way as to achieve efficient development and utilization of natural resources. Recognition of this right can be seen in Article 11 of the Covenant, "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed: (a) To improve methods of production,

¹⁴ See Article 10 paragraph 3 of the Convention

¹⁵ See Article 10 paragraph 1 of the Convention

conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies; in relation to need.”

2. Social Rights

a) The right to health and medical services.

Everyone should be able to enjoy the highest attainable standard of health, both physical and mental. States parties are obliged to ensure the realization of this right by means of the reduction of stillbirth and infant mortality and the healthy development of children, the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of all communicable, endemic and other diseases, as referred to in article 12 of the Covenant.” 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

b) Right to social security/social security

The right to social security, as stated in article 9 that each state party to the Convention recognizes the right of every person to social security, including social insurance. This provision is also associated with guarantees for pregnant women to receive leave before and after giving birth, working women to receive guaranteed leave with pay or leave with adequate social security, as stated in article 10 paragraph 2.

3. Cultural Rights

Hak azasi budaya dijelaskan dalam Pasal 15 Kovenan yang secara lengkap menyebutkan, “1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields”.¹⁶

Recognition of cultural rights as stipulated in the ICESCR, requires each state party to recognize the right of everyone to participate in culture and the arts, the right to maintain

¹⁶ See Article 15 of the Covenant

and develop cultural identity, and access to cultural knowledge. The state has the obligation to establish rules and measures in order to preserve culture nationally and in international cooperation. The right to participate in cultural and artistic life and the freedom to protect and develop cultural products.

CONCLUSION

The United Nations, which laid the foundations for the recognition and respect of Human Rights (HAM) in 1948, then continued the regulations on human rights in two covenants, namely *International Covenant on Economic, Social and Cultural Rights (ICESCR)* And *International Covenant on Civil and Political Rights (ICCPR)*.

The regulation of human rights related to economic, social and cultural rights in the ICESCR, begins with the recognition of the right of every nation to self-determination. The various rights contained in the Covenant include the right to work, receive education and training, have adequate housing, health and medical services, security and social security, and the right to participate in the cultural field.

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