



International Law Enforcement of Alleged Gross Human Rights Violations by the Chinese Government Against the Uyghur Muslim Ethnicity

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Abstract: The objectives of this research are as follows: 1. To find out what forms of alleged gross human rights violations were experienced by ethnic Muslims in the Uighurs from 2017-2018. 2. To find out the enforcement of international law on alleged gross human rights violations by the Chinese government against the Uighur Muslims. This study uses a normative juridical method, namely legal research conducted by examining literature or secondary data as a basis for research, where the focus of research activities is research on legal principles. The conflict between the Chinese government and the Uighur Muslim ethnicity has led to the crime of genocide, an attempt at ethnic cleansing because it was carried out systematically, starting with the policies of the Chinese government which cornered the existence of the Uighur Muslim ethnicity.

Keyword: Law Enforcement, Alleged Human Rights Violations, Rome Statute.

INTRODUCTION

Humans as creatures created by God Almighty are bestowed by His creator with basic rights that are innate from birth which are universal, intact, cannot be reduced or taken away by anyone. Human Rights hereinafter referred to as HAM are the most fundamental individual rights which include the rights to life in the political, legal, economic, social and cultural fields. This right is a basic need that must be owned by every individual and community group regardless of ethnicity, religion, gender, and so on. This is stated in article 2 of the *Universal Declaration of Human Rights* (UDHR), as explained below: "everyone is entitled to all the rights and freedoms set forth in this declaration without any exceptions, such as differences in race, -national or social origin, property rights, birth or other status. Furthermore, no distinction will be made on the basis of political, legal or international standing of the country or region to which a person originates, whether from an independent country, in the form of trust territories, colonies or under other limits of sovereignty.

The birth of the UDHR brought consequences for member states of the United Nations, hereinafter referred to as the UN, to state that they recognize the rights of every person as

human rights that must be respected, in order to prevent or at least reduce various arbitrary actions and state policies against individual citizens. However, human rights violations still occur frequently, one of the examples of cases of alleged gross human rights violations committed by the Chinese government against ethnic Uighur Muslims in Xinjiang.

After the People's Republic of China (PRC) proclaimed independence on October 1, 1949, Chinese Muslims often experienced harsh treatment from the ruling government. Since the Communist government came to power, through the cultural revolution it has led to restrictions on religious adherents and religious life in the PRC, as well as Chinese Muslims, especially Uyghur Muslims. In 2015 the Chinese government issued a naming rule that Muslims in the Xinjiang region may not use, in the same year the government banned the use of the burka for Muslims in Urumqi, in 2016 the Chinese government banned fasting during Ramadan and banned all forms of activity. religion in schools. Furthermore, in 2017 the Chinese government banned parents throughout Xinjiang from giving their children the names Muhammad, Jihad, Imam, Saddam, and a number of other names.

Article 18 of the UDHR 1948 mentions the principles of freedom of religion which states that: "Everyone has the right to freedom of thought, conscience and religion, including the freedom to choose and embrace a religion and to express his religion in teaching, experience and worship, both individually and in groups".

In the *International Covenant on Civil and Political Rights* (ICCPR) which was ratified by the United Nations on December 16, 1966, on Article 18 also states the same thing as what is stated in Article 18 of the UDHR. Rights in human rights have the main and first position or degree in social life because the existence of human rights has essentially been owned, carried and inherent in the human person since the time of his birth. Immediately there is also an obligation from other humans to respect it.

The Chinese government is trying to destroy Islamic culture and exacerbate its rebellion by encouraging large-scale migration of thousands of Han ethnicities to Muslim-majority areas in Xinjiang and Urumqi on the grounds of advancing the economy. natural resources and petroleum which is strategically located because it is directly adjacent to Central Asia, but ethnic Han were sent to Xinjiang only to propagate the Chinese government in Xinjiang. The transfer of population by the Han people to the Xinjiang region aims to slowly remove the Uighur ethnicity from the Xinjiang and Urumqi regions, after occupying important positions in the Chinese government the Han ethnic group made special policies for the Uighur ethnic group with the aim of eliminating the religion embraced by Uighur Muslims, namely Islam. .

Currently, there is not a single aspect of life that we carry out, which can be separated from human rights. The issue of human rights protection has been well regulated in international human rights law which specifically regulates the protection of individuals and groups from gross violations of human rights committed by government officials. However, human rights violations still often occur, restrictions on freedom or rights owned by a person, discrimination of an ethnicity to the extermination of a certain group still occur. These violations still occur in the midst of the international community which upholds equality and human dignity, because this is related to human life which should be free from insecurity and fear.

Muslims not only experience discrimination in practicing their religion, but are also arrested and forcibly detained because they protest against the Chinese government's repressive policies against Uighur Muslims . About one million Uyghur Muslims have been arrested and detained by the Chinese government in special camps that are more like prisons because they are considered vulnerable to exposure to radicalism, which is considered not in line with the communist government. Detention in camps where detainees are forced to take the oath of allegiance to Chinese president Xi Jinping, detainees are imprisoned without

charge and forced to shout communist party slogans, as well as being deprived of adequate food, inhumane treatment and widespread torture.

In the UDHR adopted by the United Nations in 1948, Article 7 contains equality before the law and the obligation to protect, which says that: "All people are equal before the law and are entitled without any discrimination to equal legal protection. Everyone has the right to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination."

Xinjiang is an example of a conflict involving alleged gross human rights violations in China which is interesting to study. Due to the form of inter-ethnic conflict which later developed into a problem that is reckoned with in the eyes of the world, it is for this reason that the author raises the issue of alleged gross human rights violations against Muslims in the Uighurs into a thesis title "Enforcement International Law on Alleged Gross Human Rights Violations by the Chinese Government Against Ethnic Uyghur Muslims".

LITERATURE REVIEWS

Human rights

Human Rights hereinafter referred to as HAM in English are better known as " *Human Rights* ". This term is related to the many aspects and models of interpretation in different languages. This term is based on basic human rights which cover ideological, political, legal, economic, social and cultural aspects. Human rights are interpreted by thinkers as basic rights that are owned by every individual as a gift from God that is innate without distinguishing anything and applies universally.

Everyone is born free and equal, this is stated in *the Universal Declaration of Human Rights* (UDHR): "Every human being is born free and has the same degree and rights. They are endowed with reason and conscience and should act towards one another in brotherhood."

Universal Declaration Of Human Rights

Three years after the United Nations was founded, the MUPBB launched the UDHR, which was a general statement on human rights on 10 December 1948³⁵. UDHR is the first written document on human rights that is accepted by all nations, which was adopted by UN Resolution No. 217 (III) of 1948. It is called the first document because the documents concerning humanity that were born before have never been agreed upon by all nations.

This declaration consists of 30 articles which make a call for the people to promote and guarantee the effective recognition and respect for the human rights and freedoms set forth in the declaration. This declaration was accepted by 49 countries with no objections and 9 abstentions, containing the ICCPR and traditional politics along with the ICESCR.

The UDHR because of its universal nature has become the basic reference for human rights documents. As a result, even though this human rights instrument is only in the form of a declaration, it has the power of action and is binding on countries based on customary international law.

International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR).

The ICCPR and ICESCR are the interests of the East Bloc and the West Bloc after the Cold War. The Eastern Bloc wants the arrangement of ICCPR rights to be combined with the arrangement of ICESCR rights, because ICESCR rights are rights that cannot be separated from human interests. However, the Western Bloc rejected this idea, resulting in the separation of the ICCPR and ICESCR.

These two Covenants are efforts to strengthen the promotion and protection of human rights in juridical documents that are binding on the countries that are parties. If the 1948 UDHR is only a recommendation even though it contains strong political and historical

values, binding human rights juridical documents can monitor the implementation of human rights effectively.

The ICCPR and ICESCR were ratified by the UN general assembly on 16 December 1966, opened for signature on 19 December 1966, and entered into force in 1976. After the convention was ratified by the required number of 35 ratifications. Even though in essence the two covenants regulate different matters, these two covenants regulate several provisions that are general in nature.

METHOD

This study uses a normative juridical method, namely legal research conducted by examining literature or secondary data as a basis for research, where the focus of research activities is research on legal principles. This study uses the *Statute Approach approach*, which is an approach to legal norms in the form of international agreements related to the protection of human rights as a basic reference material in conducting research.

The technique used to collect secondary data is by conducting literature searches or other parties studying library materials, research results that have been published (internet), legal journals or literature related to this research.

Data analysis can be formulated as a systematic and consistent delivery process for certain symptoms. The data collected in the research, both in the form of decision data and field data, will be analyzed using qualitative juridical data analysis, namely the description of research data in the form of words without using numbers based on applicable laws or norms.

RESULTS AND DISCUSSION

Forms of Allegations of Serious Human Rights Violations by the Chinese Government in 2017 – 2018 Against Uighur Muslims

After China's independence in 1949, China tried to pay attention to territorial integrity, consolidation and power through the *One Chinas Policy*, according to the ideals of modern China Taiwan, Xinjiang, Tibet are areas that are considered important and need to be defended. In history, Chinese Muslims have often experienced harsh treatment and discrimination by the ruling government (*racist regime*). Since the communist government came to power, the cultural revolution has led to restrictions on religious adherents and religious life, especially Uyghur Muslims in China. In 1997 the Chinese government ordered its military forces to shoot hundreds of Muslim citizens to death, and detained thousands of Uyghur Muslims because they protested against the government's repressive policies against Uyghur Muslims.

This incident has continued to this day which has befallen Uyghur Muslims, this event has led to acts of genocide and efforts to ethnic cleansing because it was carried out systematically and massively starting with the policies of the Chinese government which cornered the existence of Uyghur Muslims. The crime of Genocide is contained in the 1948 Rome Statute article 6 namely: "...every of the following acts were carried out with the aim of destroying, in whole or in part, a national, ethnic, racial, religious group.

In this regard, the following are allegations of human rights violations against Uyghur Muslims by the Chinese Government from 2017 to 2018.

1. Genocide Crimes

systematic, gradual massacre of one ethnic group or group with the intention of destroying (making extinct) that nation. Genocide is one of four gross human rights violations that fall under *the jurisdiction of the International Criminal Court*. Other gross violations of human rights are crimes against humanity, war crimes and crimes of aggression.

On the other hand, Uyghur Muslims have never practiced their religion freely because there were restrictions and discrimination by the Chinese government on this

matter, for those who are still determined to carry out their obligations in worship, the Chinese government applies a repressive attitude by means of arbitrary detention which is facilitated “transformation through education” in Xinjiang, with the aim of replacing religious beliefs with political loyalties for the state. The government has never paid respect to Muslims, this is evidenced by forcing the opening of restaurants in the Xianjiang area during the month of Ramadan and limiting access to mosques, in recent years the authorities have not allowed students and members of the communist party to fast and the last is the ban on the use of the burka. and has a beard that is considered abnormal.⁶⁴ In 2016 the Chinese government banned Muslims in Xinjiang from fasting during Ramadan and all forms of religious activity in schools. In 2017 the Chinese government banned parents in Xinjiang from giving their children the names Muhammad, Jihad, Imam, Saddam, and a number of other names. In 2018, the authorities in China banned children from studying the Koran and Islamic activities at school because of fear of the influence of Muslims in China concerning the principles of freedom of religion which states: "Everyone has the right to freedom of thought, conscience and religion, including the freedom to choose and embrace a religion and to express his religion in his teaching, experience and worship, both individually and as a group"

Everyone, including Uyghur Muslims, is free to practice their religion and beliefs even though they are part of a minority, the Chinese government's actions to limit this are included in human rights violations.

According to reports received by international media, within two months the Chinese police carried out raids on mosques and confined them. And there are about twenty-eight people who died because of brutal attacks in Xinjiang. This was conveyed by human rights observers and investigators who are outside the Chinese police, this incident of violence will never stop until the goals of the government are actually achieved, but the Chinese government through the security forces explains, this action is a form of counterattack carried out by the government, there were at least eighteen people who died as a result of stabbing and suicide bomb attacks and all of these were carried out by Uyghur Muslims, to overcome all this the Chinese government which considers Uyghur Muslims to be troublemakers, did not hesitate to apply shooting action on the spot like what happened on the 27th Last July, a 27-year-old Uyghur youth was shot by security forces on charges of potential opposition to the government.

2. Crimes against Humanity

The events experienced by Uyghur Muslims in Xinjiang are extraordinary crimes, apart from genocide, namely crimes against humanity which are regulated in the 1998 Rome Statute, regarding the main points of crimes against humanity article 7 namely: "...as part of a widespread or systematic attack directed at a group of civilians knowing of the attack: Murder, Extermination, Enslavement, Deportation or forcible transfer of population, Imprisonment or confiscation, Torture, Rape, Persecution of a group, Enforced disappearances, Apartheid crimes, and other inhumane acts of a nature to cause great suffering or serious injury to body, mental or physical health.

The existence of torture and arbitrary treatment experienced by detainees in the camp, revealed by several former detainees who managed to escape from the camp revealed that the incident of torture while in the Chinese camp, a 29-year-old Uyghur woman Muhrigul Tursun was arrested and tortured and sentenced to arbitrary treatment, he admitted to being tied up to be examined for four days and four nights, having his hair shaved bald, electrocuted, stripped naked, left to starve, and many other tortures.

Inhumane acts were also carried out by the CCP officials where in detention Uyghur Muslim women were raped all day long and could be killed if they refused by injecting them with something that could kill them, one by one the women were taken from the cell

and would never return, dozens of people killed all the time and they were given anti-pregnancy pills by CCP officials, confessed a 54-year-old former prisoner locked up in the camp in Urumqi who was released in September last year after being locked up for 15 months.

The deaths of several people in political education camps, adding to concerns about physical and psychological violence, as well as the stress of poor conditions, overcrowding and indefinite detention. Even when basic medical care is available, people are still detained even when they have a serious illness or are elderly. There are also children, pregnant and lactating women, and people with disabilities. A number of former detainees have also reportedly attempted suicide and there are harsh penalties for those who disobey on the premises. In recent years, the Chinese government has devoted enormous financial, human and technical resources to social control in Xinjiang. Authorities have hired tens of thousands of additional security personnel while setting up "conveniences" at police stations and checkpoints in the region. They closely monitor their family and social networks as an indicator of their level of political confidence. Governments detain people and subject them to greater levels of control based not only on their own behavior or beliefs, but also those of their family members, a form of collective punishment that is contrary to international human rights law, especially Article 3 on life, liberty and safety of the individual, Article 5 regarding the prohibition of cruel torture and humiliation, Article 9 regarding the prohibition of arbitrary arrest, disposal, Universal Declaration of Human Rights.

Article 3 of the Universal Declaration of Human Rights (UDHR) states that : " Everyone has the right to life, liberty and security of a person".

Xinjiang, where the majority are Uighur Muslims, which makes the region the largest Muslim ethnic group in China, has made the Chinese government want to increase the infiltration of religious extremism and Uighur Muslim culture, which according to the Chinese government is religious radicalism and extremism. Therefore the Chinese government created re-education camps which are more appropriately called prisons, where Uighur Muslims were forcibly arrested and detained by the Chinese government and controlled all their movements without any space for freedom, in the camps Uighur Muslims received very inhumane treatment and forcibly undergoing indoctrination programs to Chineseize (Sinicization).

International Law Enforcement of the alleged gross human rights violations by the Chinese Government against the Uighur Muslims.

1. Conflict resolution efforts through the United Nations (UN)

As one of the International Organizations, the United Nations is part of the nations of the world which aims to maintain security, world peace and international relations. The name "United Nations" (UN), coined by United States President Franklin D. Roosevelt was first used in a declaration by the United Nations on January 1, 1942, during the Second World War, when representatives of 26 nations pledged their governments to keep fighting together against the Axis Powers. The UN officially appeared on October 24, 1945 and currently consists of 193 member states.

If the mediation method has been carried out by the state in ending the disputes and conflicts that have occurred, but has not been able to resolve the conflict, then the issue regarding human rights violations against the Uighur Muslim ethnic group by the Chinese government can be taken over by the UN Security Council to be resolved using legal means, or litigation through the International Criminal Court.

2. Conflict resolution efforts through *the International Criminal Court (ICC)*

The International Criminal Court (*International Criminal Court*) is an international judicial body that is independent and formally different from the United Nations, but in its formation the United Nations plays a very important role. The UN Security Council has the right to refer cases to the Court. The exact relationship between the two organizations will be determined later through an agreement.

The crimes that occurred during World War II had sparked the formation of a Military Tribunal known as the Nuremberg Tribunal through the London Agreement to try Nazi war criminals. Likewise, in 1946, the allied countries agreed on a charter that established an international Military Tribunal for the Far East known as the Tokyo Tribunal to try Japanese war criminals during World War II.

The idea to form a Criminal Court continued from 1949-1954. On the basis of UN General Assembly Resolution No. 51/207, 1966 and Resolution No. 52/160, 1997 held The United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court which took place from 15 June - 17 July 1998 at FAO Headquarters in Rome, attended by as many as 160 countries, 33 International Organizations and 236 NGOs. S. Vote on 17 July 1998 by 120 countries, 7 against and 21 abstained. In accordance with article 26 of the Statutes of the Court shall enter into force after its deposit with the Secretary General of the United Nations the 60th ratification on 1 July 2002.

Even though China is not a participant or member of the Rome Statute, it does not mean that China can be free from prosecution for human rights violations that it committed against the Uighur Muslim ethnicity, because the *International Crime Court* has requirements that regulate regarding the applicability of the jurisdiction of the International Crime Court to countries that are not party members of the Rome Statute. Besides that, the International Crime Court also does not recognize the validity of *Personal Immunity*, which means that a person's immunity from the law, in article 27 of the 1998 Rome Statute states that, state officials will be responsible for all actions they take on behalf of that country, immunity or special procedural regulations that may be related to a person's official position either under national or international law do not hinder the Court in exercising its jurisdiction.

CONCLUSION

The conflict between the Chinese government and the Uighur Muslim ethnicity has led to the crime of genocide, an attempt at ethnic cleansing because it was carried out systematically, starting with the policies of the Chinese government which cornered the existence of the Uighur Muslim ethnicity. The conflict between the Chinese Government and the Uighur Muslim ethnicity is motivated by several things, namely, the Chinese government's desire to implement the *One China Policy*, and wanting to control the settlements of the Xinjiang Autonomous Region which is a residential area of the Uighur Muslim ethnicity, so that the Chinese government takes repressive actions against Uyghur Muslim ethnicity, which can be categorized as an extraordinary crime (*extra ordinary crime*).

According to article 33 of the UN Charter, the parties to the dispute can resolve the problem by using Mediation first. If this method is not successful, the UN Security Council can submit this case to an international court, namely the *International Criminal Court (ICC)* regulated in the Rome Statute of 1998.

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