

# 13. Protection of Uighur Muslim in Human Rights Aspect in International Law Perspective

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**Submission date:** 17-Oct-2023 11:59AM (UTC+0700)

**Submission ID:** 2198341358

**File name:** slim\_in\_Human\_Rights\_Aspect\_in\_International\_Law\_Perspective.pdf (158.95K)

**Word count:** 5376

**Character count:** 29503

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# Protection of Uighur Muslim in Human Rights Aspect in International Law Perspective

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Received: 24 February 2022      Accepted: 09 May 2022      Published: 12 July 2022

**Abstract:** Human rights are fundamental individual rights, these rights are the right to live in the political, economic, social, and cultural fields. Amid efforts to maximize the fulfillment of human rights, both nationally and internationally, there is a conflict in China between the Chinese government and Uighur Muslims which has resulted in human rights violations. This study aims to look at the regulation of human rights protection from the point of view of national law, namely the Law of the People's Republic of China, and from the point of view of International Law. This type of research is a literature study, the approach used is normative, the data collection technique is through data collection in the form of readings such as journals, books, and the internet, the results of which are directly analyzed through qualitative methods. The results of this study indicate that the protection of human rights is stated in the Chinese Constitution but its implementation is very difficult because it is contrary to China's use of communism, while the protection of human rights from international law is very possible because it is regulated in an international legal instrument, namely the Universal Declaration of Human Rights, 1949 Geneva Conventions and the Rome Statute.

**Keywords:** Human Rights, Uighurs, China, International Law.

## 1. INTRODUCTION

Humans are the noblest creatures created by God, and have a sublime degree as human beings, have an independent mind and will. As creatures created by God Almighty, all humans have the same rights as humans. These rights are often called human rights (Asmarudin, 2019). Human Rights (hereinafter referred to as HAM) are fundamental individual rights, these rights are the right to live in the political, economic, social, and cultural fields. These rights are a basic need that must be held by all people and society, regardless of religion, ethnicity, race, gender, and so on (Kasmina, 2020).

The diversity of the population found in all parts of the world makes the number of tribes, religions, races, and community groups something that should be studied by all groups. Some individuals make a difference as beauty to be grateful for. Differences and diversity of



tribes, races, and religions encourage humans to learn about differences such as language, customs, culture, and others.

International law gave individuals independent international legal status, especially after the end of the First World War. People under international human rights were originally listed in the Geneva Conventions and could only defend rights that apply to the United States treaty (Saragih, 2015). The bitter experience of humanity in the two World Wars, where the dignity of human rights was trampled on, then aroused the conscience to place respect and respect for human rights in the United Nations Charter, and its realization occurred later. United Nations in the Universal Declaration of Human Rights approved by the United Nations General Assembly on 10 December 1948 (Saragih, 2015). Until now, all aspects of life are listed in human rights. The issue of international human rights protection is well regulated in international human rights law, especially that which regulates the protection of individuals and groups against gross violations of human rights committed by the government (Kasmina, 2020).

Recently, the international community has been enlivened by the Chinese government's treatment of Uighur Muslims in the Xinjiang autonomous region, China. Not yet finished with the issue of discrimination against the Rohingya ethnicity, the international community is faced with almost the same case, namely discrimination against Uighur Muslims, and of course this issue makes China the center of attention of the whole world. Several international media have claimed that Uighur Muslims have been tortured, exiled, and barred from practicing the community's religious teachings. The Chinese government's attitude towards Uyghur Muslims who implement discriminatory policies is considered a violation of human rights (Fathurrahman, 2019).

Under the pretext of economic development, the Chinese government is gradually destroying Islamic culture to relocate thousands of Han citizens to the Xinjiang Uygur Autonomous Region and the Muslim-dominated Urumqi region to escape the insurgency. Despite being on the border of Central Asia, the Han people migrated to the Xinjiang Uygur Autonomous Region to expand China's control in the Xinjiang Uygur Autonomous Region, so that they have large natural resources in the form of natural gas and oil and are very strategic (Kasmina, 2020). The massive relocation of Han Chinese to Xinjiang and the Urumqi Uyghur Autonomous Region is a policy of the Chinese government aimed at eliminating the mostly Muslim Uyghurs.

Uighur Muslims need legal protection that protects the rights of individuals and groups from both national and international law. The lack of international support makes it difficult for Uighur Muslims to fight for their rights. Islamophobia in the western world makes it difficult to get international support. Regarding this matter, the international community is obliged to pay more attention, especially to the use of human rights. Protection of human rights also the responsibility of a state to provide guarantees and protection for law enforcement in human rights norms.

The role of the International Criminal Court (ICC), which has jurisdiction to exercise jurisdiction over serious international crimes, is required in article 5 of the Rome Statute, namely genocide, perpetrators of crimes, crimes against humanity, war crimes, and attacks (Kasmina, 2020). Seeing cases of human rights violations that occurred to the Uighur Muslim minority committed by the Chinese Government, it is necessary to have human rights protection against Uighur Muslims both from National Law and International Law.



The problems discussed in this study are human rights in law in the People's Republic of China, the protection of Uighur Muslims in terms of human rights in terms of the laws of the People's Republic of China, and the protection of human rights for Uighur Muslims in the perspective of international law.

## 2. RESEARCH METHODS

The type of research used is "Library Search", namely literature study. A literature study or "Library Search" is a study that uses secondary data. This study uses secondary data in the form of books or relevant international journals via the internet. The approach used in this research is normative. The normative approach involves investigating legal issues that may or may not be permitted by current legislation. The documents used are related to the search for written legal norms such as the Universal Declaration of Human Rights (UDHR), the Rome Statute, and the 1949 Geneva Conventions. The method of data collection in this research uses library research. Library research, namely collecting data on various reading sources such as journals, books, opinions of scholars, dictionaries, and data obtained by the authors from the internet. The data analysis that the author uses is a qualitative analysis method. The qualitative analysis technique is the process of processing data into patterns, categories, and basic units, in which topics are presented narratively. This study uses qualitative data analysis because the data is presented in descriptive stories instead of numbers.

## 3. DISCUSSION

### 1. Human Rights in Law in the People's Republic of China

The term human rights is a translation of the term *droits de L'homme* in French which means human rights or in English human rights and Dutch *mensenrechten*. Generally, the term human rights are used which is a translation of basic rights in English and *grondrechten* in Dutch. Some people call it fundamental rights as a translation of fundamental rights in English. In the United States, apart from using the term human rights, the term civil rights are also used (Renggong, 2021).

Rights have various meanings. Rights can be referred to as the authority to do something. While human rights have a meaning that is fundamental or fundamental. So that human rights have the meaning of fundamental rights or are the main rights obtained by humans and are fundamental, such as the right to life, the right to speak, the right to have a place to live, the right to have spring, the right to get protection and so on (Nova, 2017).

In the General Declaration of Human Rights, human rights are defined as basic rights inherent in humans by nature, universal and for life as a gift from God Almighty, including the right to life, the right to have a family, the right to have protection, the right to justice, the right to freedom, the right to communicate, the right to security, which therefore cannot be taken by anyone. Furthermore, humans have rights and obligations that arise from the development of life in society (Natsif, 2013).

After understanding the notion of human rights, it is necessary to understand that not every demand in society, both individually and in groups, can be considered a right. Human rights have important characteristics. The characteristics of human rights are as follows:

- a. Inherently, people have human rights because they are human beings;





- b. Universal, applies to all individuals regardless of religious, ethnic, national, or background. One of the fundamental principles of human rights is equality;
- c. It cannot be denied, cannot be revoked, confiscated, or given to anyone;
- d. Indivisible, each individual can obtain all rights, namely civil and political or economic, social, and cultural rights; and
- e. Being interdependent, exercising one right is influenced by other rights, exercising civil and political rights makes it possible to live out better economic and social rights, and exercising economic and social rights makes it possible to live out better civil and political rights (Natsif, 2020).

Human rights that are universal and recognized must be protected and respected in general by various parties. Human rights are respected and protected in society, nationally or internationally. There are certain rules for the implementation of human rights regardless of ethnicity, religion, or nationality. In international law, a state is considered to have committed a gross violation of human rights if:

- a. The state does not try to protect or even negate the human rights of its citizens; and
- b. The country allows or commits through its government apparatus the treatment of international crimes or serious crimes in the form of crimes against humanity, crimes of genocide, war crimes, and or crimes of aggression (Harahap, 2021).

Every country must regulate human rights issues in its constitution. Human rights arrangements in the Constitution are defined as efforts to strengthen people's rights or legal empowerment, to ensure that their rights are guaranteed, protected, and enjoyed through international provisions (Diantha, 2016).

The 2004 Constitution of the People's Republic of China contains human rights in a total of 24 articles, from Articles 33 to 56 listed in Chapter 2. The title of this chapter has its characteristics against the laws of other countries. The title is "Basic Rights and Duties of Citizens". That is, the law also regulates all the basics and all the basic obligations of citizens. The subject of the regulation is a citizen (citizen), not a foreigner (Kharisma, 2021). The Human Rights clause in the People's Republic of China regulates the content of human rights, including economic, political, social, and cultural rights. As mentioned above, Article 33 states that all Chinese citizens have basic rights and obligations, and Article 34 is the only article that regulates political rights. While articles 35-41 and 48-50 regulate civil rights, all articles governing economic, social, and cultural rights range from 42 to 47. All articles with basic obligations range from 51 to 56 (Kharisma, 2021).

## **2. Protection of Human Rights of Uighur Muslims in the Legal Perspective of China**

The Chinese government has violated the human rights of the Xinjiang Uygur Autonomous Region for its actions against Uighur Muslims, including violations of religious freedom. According to international media, Chinese government officials have banned Uighur Muslims from the Xinjiang Uygur Autonomous Region from carrying out religious activities and religious obligations of Uighur Muslims. People are not allowed to do that either. Religious ceremonies such as praying and fasting during Ramadan are closely monitored by Chinese government security forces. Even the Uygur Muslim community cannot enter the mosque and pray. During the holy month of Ramadan, state officials are sent to the headquarters of the Uighur Islamic community to prevent the Uighur Muslim community from fasting, but the Chinese government says this is to maintain the security and stability of the country (Harahap, 2021).



According to Amnesty International, Xinjiang is the only province in China that accepts the death penalty for detainees and is the only province that can do so. The Chinese state has kept secret the death toll of political prisoners sentenced to death, but according to the affected population, the Chinese government's death toll from executions and torture increased to 2,500 between March 1999 and March 2000 (Fathurrahman, 2019).

The efforts made by the Chinese government initially did not aim to physically eradicate the Uighurs, but the policies issued by the Chinese government aimed at ridding Chinese citizens of Islamic ideology, because according to the government, Islamic ideology is a very contagious disease for the survival of their state life and also contrary to the ideology adopted by China. In the government's view, Uighurs who suffer from the disease should be quarantined, and the Chinese government's way to achieve this goal is to empower Uighurs to be fostered in re-education camps (Rosyidah, 2020).

Even though China is a communist country, it still regulates the religious freedom of its people. Historically, when the country was founded in 1949, religious freedom was recognized as a human right, but there was still no official constitution, and it was in the form of a pro-constitution (original constitution) as a joint program.

The Chinese Constitution provides for the regulation of human rights in Articles 33 to 56, contained in chapter 2. The title of this chapter is "Fundamental Rights and Duties of Citizens". By the title of this chapter, the Chinese Constitution already regulates the basic rights and obligations of citizens (Diantha, 2016). The articles are as follows:

- a. Article 33 regulates that all citizens have basic rights and obligations;
- b. Article 34 regulates Political Rights;
- c. Article 35 regulates freedom of expression and freedom of the press;
- d. Article 36 regulates freedom of religion;
- e. Article 37 regulates individual freedom;
- f. Article 38 regulates the affirmation of the integrity of human dignity and worth;
- g. Article 39 regulates information about a residence;
- h. Article 40 contains freedom of communication and confidentiality;
- i. Article 41 contains provisions governing the right of citizens to criticize and propose to the state;
- j. Article 42 affirms the right to work according to the socialist system;
- k. Articles 43 and 44 cover leave and pension entitlements; and
- l. Article 45 stipulates provisions regarding the right to social security (Diantha, 2016).

In addition to regulating the basic rights of citizens, the second chapter of the Chinese Constitution stipulates basic obligations. The article covers basic requirements ranging from 51 to 56. Article 52 states that "Citizens of the People's Republic of China have to safeguard the unity of the country and the unity of all its nationalities." It is stated that Chinese citizens must maintain national unity and the unity of all citizens (Kharisma, 2020).

Human rights arrangements in the Chinese Constitution are highly regulated in such a way, but their implementation has always been in the spotlight of western countries. Among them is the Chinese government's policy towards Uighur Muslims in Xinjiang. The Chinese government, as it is known, adheres to a socialist ideology, which is more concerned with fulfilling the economic rights of its people, than other rights.

The Chinese constitution not only regulates basic rights but also basic obligations which in essence become the Four Cardinal Principles of the constitution, namely: (1) We must keep to the socialist road (2) We must uphold the dictatorship of the proletariat (3) We must uphold



<sup>13</sup> the leadership of the Communist Party (4) We must uphold Marxism, Leninism, and Mao Zedong Thought. In law, the four basic principles are superior to the basic rights of citizens and have full legal force. In essence, China emphasizes those who wish to replace or abolish the four basic principles of the Constitution (Kharis<sup>31</sup>, 2020).

From the above description, it is clear that the Chinese government's policies in <sup>14</sup> Xinjiang Uyghur Autonomous Region violate the human rights norms regulated in the Constitution of the People's Republic of China. According to the Chinese government, these four basic <sup>18</sup> principles are above the basic rights of citizens. These four principles are the foundation of the Chinese Communist Party. So that the enforcement of human rights using the national constitution has very little possibility.

### <sup>1</sup> 3. Protection of Human Rights of Uighur Muslims in the Perspective of International Law

The emergence of conflict between the China<sup>19</sup> Government and Uighur Muslims began with the emergence of discriminatory policies by the Chinese Government<sup>1</sup> towards Uighur Muslims. Judging from the history of the founding of China, this conflict has been going on for a long time and of course, received special attention from the international community. In implementing policies from the Chinese government to discriminate against a group and its implementation is not far from human rights violations.

What the Chinese Government has done to Uighur Muslims is propaganda and brainwashing wherein the Chinese Government has set up a centralized camp that includes the Uyghur Muslim community. Because they believe that they are heretical and have committed terrorist or separatist acts that could endanger the integrity of the country. Governments often restrict the general public, as well as those who consider themselves supporters of separatism. The government wants to eradicate the Uighurs (Nur, 2021). From this conflict, International Human Rights Law should be present in protecting Uighur Muslims.

In human rights principles, the state is the party that has power, <sup>38</sup> the state also has limitations about this, namely the state is not allowed to abuse its power. From a legal point of view, the state is the party that is obliged to protect, guarantee and fulfill the human rights of its citizens (Rosyidah, 2020). In general, the state is not only obliged to respect internationally recognized human rights, but also to pay attention to the implementation of all the rights mentioned in its jurisdiction. This obligation also directly implies that the state is obliged to take precautions to prevent violations. If a state cannot prevent human rights violations, it must be held accountable. State accountability is the responsibility of the international community, not the countries that are harmed, as stated in international law (Asplund, 2008).

Under international <sup>8</sup> human rights law, China has imposed actions that lead <sup>3</sup> human rights violations under the jurisdiction of the International Criminal Court and the Rome Statute. According to the International Criminal Court<sup>23</sup> and the Rome Statute, what is defined as a gross violation of human rights is the crime of genocide, crimes against humanity, war crimes, and crimes of aggression. Gross human rights violations require special attention and require immediate action following international law. The presence of international law must lead to serious policies to control violations that occur (Nur, 2021). <sup>16</sup>

The Chinese government violates their human rights by detaining Uighur Muslims in camps in the Xinjiang Uyghur Autonomous Region. The Chinese government's attitude towards the Uighurs is also inseparable from the history of the Chinese government Uighurs. Due to the history of the Uighurs who had campaigned for independence in eastern





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Turkeminastan and the notions of terrorism to the people of the Xinjiang Uyghur Autonomous Region, the emergence of a very strict and strict ethnic group caused a crisis of trust by the Chinese government (Hanifah, 2019).

In this case, the protection of ethnic Uighur Muslims can use the 1949 Geneva Conventions on non-international armed conflicts as a reference. In general, the Geneva Convention emphasize that people must be protected in all situations and treated with humanity, without any distinction based on race, color, religion or belief, sex, birth, wealth, or other criteria (Bakry, 2019).

Provisions regarding non-derogable rights are contained in Article 3 concerning the concurrent provisions of the 1949 Geneva Conventions. These non-derogable rights include the right to life, the principle of non-discrimination, prohibition of torture, freedom of opinion, prohibition of retroactive criminal law as stipulated in the convention, civil and political rights, the right not to be imprisoned because of the inability to carry out the provisions of the agreement (contract), slavery, servitude, prohibition of irregularities related to imprisonment, recognition of a person as a subject of law, belief, and religion, prohibition of imposition of law without a decision announced in advance by a customary court, the prohibition of imposing the death penalty and carrying out executions in the circumstances stipulated in article 3 paragraph (1) letter (d) which coincides with the four Geneva Conventions. This article is important because it emphasizes the obligation of the state to continue to guarantee protection to individuals by overriding the status of "belligerent" according to the law (Bakry, 2019).

The Chinese government's actions against Uighur Muslims in Xinjiang are contrary to articles 5 and 9 of the Universal Declaration of Human Rights (UDHR) and in articles 7 and 41 of the International Covenant on Civil and Political Affairs. Human Rights (ICCPR), the Convention against Torture (CAT), and the provisions of Articles 5, 6, 7, and 8 of the 1998 Roman Law. The religious prohibition concerning Article 9 of the ICCPR. Although China signed the Covenant on October 5, 1998, the Chinese government has not ratified it. China only must act in good faith and not violate the objectives of the Treaty. Discriminating freedom against ethnic Uighurs is not by the objectives of the agreement (Rosyidah, 2020).

Cases of crimes against humanity against Uighur Muslims, including murder, destruction of religion, torture by the government in power, and this case the lack of freedom to practice religious beliefs in China, there is still a possibility for the International Criminal Court to exercise its jurisdiction. In this regard, the Chinese Government's crimes meet the relevant requirements of the Rome Statute, in particular Article 7 relating to crimes against humanity (Kasmina, 2020).

The arrest and detention of Uighur Muslims as well as crimes committed by the Chinese government in concentration camps are subject to the provisions of Article 7 point (e) of the Rome Statute. Imprisonment or serious deprivation of liberty in violation of basic norms of international law is not permitted for anyone or anyone. Confining Uighur Muslims in so-called concentration camps is very unnatural, with a severe lack of physical freedom, lack of permission to carry out activities under Islamic law, and the activities they desire. Chinese government activities such as the Uighurs have been enslaved (Nur, 2020).

The Universal Declaration of Human Rights (UDHR) the main norm of freedom of religion or belief. This declaration is a sign that all countries in the world take the protection of human rights seriously. The declaration emphasizes that the rights enshrined in the Universal Declaration of Human Rights have the right to be obtained by everyone, regardless of religion. In addition to freedom of belief, the Universal Declaration of Human Rights also regulates





several other articles that can be used as a reference for the protection of Uighur Muslims, namely article 2 which states that the rights and freedoms that each individual gets are the same regardless of identity. Next, articles 3 and 5 states the right to life and the right not to be tortured or humiliated. Meanwhile, Article 7 states that everyone cannot be allowed to get discriminatory actions. Furthermore, article 9 deals with the prohibition to arrest or detaining someone. Next article 19 contains freedom of opinion and article 20 which contains freedom of assembly and association.

Cases of discrimination against Uighur Muslims can be tried through the UN Security Council through the International Criminal Court in four jurisdictions. The first jurisdiction is substantive jurisdiction based on the type of crime obtained as described in Articles 5 to 8 of the 1998 Rome Statute, the treatment of ethnic Uighurs is included in the category of crimes of genocide and crimes against humanity. The second is temporal jurisdiction, as regulated in Article 11 of the 1998 Rome Statute, the case of Uighur Muslims can be tried through the International Criminal Court because this case occurred after 1 July 2002. The third is territorial jurisdiction, the provisions of which are regulated by Article 12 of the 1998 Rome Statute regarding the place of occurrence. criminal acts and the last is personal jurisdiction, which according to article 25 of the 1998 Rome Statute, the perpetrators, in this case, are government officials, commanders, military, and civilians in China (Kurniawan, 2022).

#### **4. CONCLUSION**

Based on the discussion above, it can be concluded that human rights are regulated in the Constitution of the People's Republic of China in Chapter II which contains basic rights and basic obligations. In this regard, Uighur Muslims should receive protection from the national constitution regarding human rights violations committed by the Chinese government against Uighur Muslims. However, in the view of the Chinese Government, The Four Cardinal Principles have a higher position than the basic rights of citizens. These four principles are the main tenets of the Chinese Communist Party. So that it is very difficult for Uighur Muslims to get national justice because the government holds full power, including in law enforcement which is more concerned with economic rights than other rights. Protection of human rights in the perspective of international law has protected in such a way the rights of individuals or groups, especially for the life of an ethnic group. In terms of human rights protection, there is the Universal Declaration of Human Rights (UDHR), the Rome Statute, and other conventions that can be used as references for the protection of human rights for Uighur Muslims. The policies of the Chinese government are very contrary to international human rights because in its implementation there is discrimination against a group, ethnicity, race, culture, and religion which can be categorized as crimes against humanity. The resolution of conflicts between the Chinese government and Uighur Muslims cannot be resolved through national law because the Chinese government in this case has committed extraordinary crimes that violate human rights in the category of gross human rights violations. In this regard, the UN Security Council can participate in adjudicating through the International Criminal Court (ICC) by taking into account four jurisdictions, namely material jurisdiction, temporal jurisdiction, territorial jurisdiction, and personal jurisdiction



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