Analysis of Recognition from the Perspective of International Law and Implementation of Public Policies in Indonesia and Myanmar

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Abstract

Human rights are a universal issue that is of concern to the international community. The countries of Indonesia and Myanmar certainly have a historical record of quite large human rights violations, so it is very important to know and learn about the recognition of human rights between the two countries and the implementation of public policies related to human rights in these two countries, namely Indonesia and Myanmar. This study aims to analyze, discuss, and provide an overview or view of the differences in the recognition of human rights between Indonesia and Myanmar from the perspective of international law, while also analyzing the implementation of public policies related to rules and laws regarding human rights. Human rights in both countries through legislative mechanisms and public policy practices, especially in Indonesia and Myanmar. The method used in this study is a normative legal method with data analysis techniques through literature studies, collecting information from various sources, including reports from international and national human rights organizations, academic publications, journals, and other information sources related to human rights. The main findings show that there are several differences in the recognition of human rights between Indonesia and Myanmar based on international conventions on human rights. In addition, the implementation of rules or laws on human rights in both countries also has its own challenges, such as the weak protection system for victims of human rights violations and local cultural factors. The conclusion of this research is that, despite progress in implementing international standards on human rights in Indonesia and Myanmar, there are still some challenges that need to be overcome. Therefore, there is a need for further efforts from the government and civil society to increase the recognition and protection of human rights in the two countries. This research provides a deeper understanding of comparative human rights in Indonesia and Myanmar, as well as valuable insights for efforts to improve and protect human rights in both countries.

Keywords: Human Rights, Comparison, Implementation of Public Policy

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1. Introduction

Human rights are very important in human life. Human rights (HAM) are basic rights that are naturally inherent in humans and are universal. Human rights must be protected, respected, and maintained and must not be ignored, diminished, or seized by anyone, including the government and state apparatus. Human rights are a set of rights that are inherent in the nature and existence of humans as creations of God Almighty and must be respected, loved, and protected by the state, government laws, and others for the sake of honor and protection of human dignity and worth. Human rights are universal. This means that it belongs to everyone, regardless of ethnicity, religion, race, or class. (Murthada, M., Sulubara, S. M. 2022).

Even though there are many international conventions regarding human rights, there are still frequent violations of human rights in Indonesia and Myanmar. Indonesia and Myanmar are countries that are members of ASEAN. The two countries have their own constitutions and institutions to protect human rights. By doing this comparison, it is hoped that it can provide new knowledge about human rights in Indonesia and human rights in Myanmar. The countries of Indonesia and Myanmar have differences in the recognition of human rights and the ways in which they are implemented through legislation, mechanisms, and public policies. Because of this, this study was made with the aim of carrying out a comparative analysis between the conditions of human rights in Indonesia and those in Myanmar.

The Republic of Indonesia is a rule of law state, as is the existence of human rights in the concept of a rule of law country in Indonesia. However, state regulation of human rights is meaningless if the state restricts human rights, but the perception is that these are regulations made by the government. A state of law is not only subject to the rule of law but also includes ethical (moral) values, in this case good standards legally or in civilization, in people's lives for the common good that can affect society. There is equality before the law; in this case, all people, regardless of their status, position, or class in society, will be subject to the same law. (Rumiartha, I. N. P. B., 2022).

There is constitutional protection of human rights with legal guarantees for demands for enforcement through a fair process. The formation of a state and the exercise of power in a state must not reduce the meaning and significance of basic freedoms and human rights. So if
in a country violations of human rights cannot be dealt with fairly, this country cannot be called a rule of law in the true sense. (Fauzan Khairazi, 2015).

Myanmar is a country that has its own constitution to regulate human rights in its society. In the past few years, there have been many human rights violations in that country, which in particular can threaten the right to freedom. These human rights violations are considered the most serious crimes, so serious steps are also required to prevent and follow up on these human rights violations. (Gunawan Abdul, 2018).

Based on the background and general description, the formulation of the problem to be discussed in this study is "How is the comparison of recognition in the implementation of human rights (HAM) between the countries of Indonesia and Myanmar?". Based on the formulation of the problem, the purpose of writing this journal is to know and understand more deeply the condition of human rights in terms of regulation and practice in the two countries, as well as a comparison of the implementation and protection of human rights in Indonesia and human rights in Myanmar.

Writing in this journal uses the normative legal research method as the main method used by the author to find answers to a problem that has been formulated and to achieve the goals that have been determined. Peter Mahmud Marzuki is of the opinion that normative legal research is a process of finding legal principles, a rule of law, and legal doctrine to answer the legal issues at hand. Normative legal research looks at law from the point of view of norms only, and of course, this method is also descriptive in nature (Depri Liber Sonata, 2014).

This analysis technique is used in normative legal research methods to analyze legal texts systematically and objectively. The normative legal method is a method used in research conducted by researching and analyzing existing literature. Research using normative legal methods is research that examines a document study using various primary, secondary, or tertiary data sources. Primary legal materials, such as legal materials in statutory regulations, Secondary legal materials such as doctrine or expert opinion, law journals, and internet sources. Tertiary legal materials are legal materials that support primary legal materials and secondary legal materials by providing an understanding of other legal materials. By using this normative law method, the author collects theories and data from law books and legal journals to be reviewed and then analyzed to obtain information from which conclusions can be drawn.
2. Analysis and Discussion

This research, entitled Comparison of Human Rights in Indonesia and Human Rights in Myanmar, contains an analysis and explanation of the formulation of the problem that has been raised, namely, researching and analyzing "How is the comparison of the implementation of human rights between the countries of Indonesia and Myanmar through legislation mechanisms as well as public policy practices? In the comparison of human rights in the country of Indonesia and human rights in the country of Myanmar, there are differences or similarities in the recognition of human rights and their implementation in rules, laws, and so on. Despite these differences and similarities, there are still many human rights violations in Indonesia and Myanmar.

Human rights cannot be separated from the acceptance of the principle that the state (government) has an obligation to guarantee and provide protection for human rights in addition to being the responsibility of the country concerned. Besides that, it is also a joint responsibility of the international community, including Indonesia and Myanmar, which are members of ASEAN. According to several opinions, from the point of view of regulation of human rights, on the one hand, human rights have a nature that limits government power, but on the other hand, the government is given the authority to limit basic rights in accordance with the control function (sturing). Although these basic rights are restrictive, for state rulers, these restrictions do not mean that power will be revoked. government, which essentially includes the power to regulate life in society. There is also a principle of recognition and respect for human rights; this is a principle that must guarantee, protect, and uphold human rights in general and civil rights in particular in all civil matters. In order to defend and protect human rights in accordance with the principles of a democratic rule of law, the fulfillment of human rights is guaranteed, regulated, and determined in laws and regulations. Everyone is obliged to respect the human rights of others in the implementation of social, national, and state life. (I Gede Yusa, 2016).

Recognition of human rights from the perspective of international law is a concept that recognizes that every individual has the same rights that cannot be revoked by the state or other parties. This concept is contained in several international legal instruments, such as the Universal Declaration of Human Rights (UDHR), which was ratified by the United Nations in 1948. Based on the provisions of Articles 1 paragraph 1 and 4 of the United Nations (UN)
Charter, it is determined that the purpose of the United Nations is to maintain international peace and security, in this case through effective collective action to prevent and eliminate various threats. for peace, to suppress aggression or other violations so that they can be carried out peacefully and in accordance with the principles of justice and international law, adjustments to the international situation that can lead to peace, and the United Nations and the Center for the Harmonization of Peaceful Nation Action with common goals (Rumiartha, I. N. P. B., 2022).

On the other hand, to create harmony and peace, every international community, the governments of countries in the world, and all of its components are obliged to educate the nation's life, which is one of the goals of a country. Education in principle requires the implementation of the principles of upholding human rights, democracy, decentralization, and justice in the lives of the nation and state. (Kenevan, T. J., 2022).

The recognition of human rights from the perspective of international law emphasizes that human rights are universal rights that are not limited by geographical, cultural, or religious boundaries. This means that everyone has the same rights to life, freedom, and security: the right to be free from torture or ill-treatment; the right to hold and express opinions; the right to work and get decent wages for work; and the right to get an education and proper health. The recognition of human rights from the perspective of international law also underlines the duty of the state to protect human rights and ensure that these rights are respected and protected. The state must also ensure that human rights violations are properly condemned, punished, and dealt with.

The Universal Declaration of Human Rights (UDHR) is a document that contains universally recognized human rights. The document is used to form the basis for international human rights law and influences many international legal instruments and national human rights laws in various countries. The UDHR contains 30 articles, namely regarding universally ratified human rights, including the right to freedom, the right to justice, the right to education, the right to health, and the right to a decent job. The UDHR was appointed by the General Assembly of the United Nations on December 10, 1948. The UDHR emphasizes the importance of human rights to create peace in the world.
Every human being has the same degree of dignity. In the past, humans did not recognize the existence of human degrees among others, resulting in oppression between one human being and another human being. This is because there are no regulations or laws governing human rights. Like the most concrete example of colonialism from one nation to another. The State of Indonesia was colonized inhumanely by colonialism by oppressing and tormenting its people. Thus, a continuous struggle is carried out to maintain the human rights possessed by the country. Not only Indonesia, but the country of Myanmar also experienced this, and it was said to be even worse. In the past few years, there have been many violations of human rights in the country of Myanmar, such as the occurrence of violations of human rights in the genocide of the Rohingya people in Myanmar. The crime of Genocide includes prohibited acts aimed at destroying, in whole or in part, a nation, ethnic group, race, or religious group. According to international law, genocide includes crimes against humanity, war crimes, and crimes of aggression. These are categorized as international crimes because they are considered prohibited and the most heinous crimes, so serious steps are required to prevent and follow up on these problems (Gunawan, Abdul, 2018).

There are many serious human rights violations in the world. Based on Article 5 of the Rome Statute of Myanmar of 1988, which explains what constitutes a violation of human rights, Article 5 of the Rome Statute of 1988 regulates the jurisdiction of the International Criminal Court, which states that the international criminal court has jurisdiction over an international crime that occurred after the Rome Statute came into effect. On July 1, 2002, the International Criminal Court gained jurisdiction for four types of serious violations of concern to the international community: genocide, crimes against humanity, war crimes, and crimes of aggression. The international criminal court has jurisdiction over international crimes committed in a country that is not a member of the Rome Statute if the United Nations Security Council refers to Article 13(b) of the United Nations Charter. These include war crimes, aggression, genocide, and crimes against humanity in the country.

In Burma, a country usually called Myanmar, there is one ethnic group whose human rights have been persecuted or violated, namely the Rohingya. The Rohingya originally came from Bangladesh but settled in Myanmar in the 7th century AD. The Rohingya are a Muslim (Islamic) minority living in the western part of Myanmar. Various human rights violations, such as genocide and other serious human rights violations, have been committed against the
The Rohingya's right to freedom of movement can no longer be recognized because the Rohingya people were persecuted so badly at that time that it limited their freedom of movement. Actions in the country of Myanmar are very inhumane and can lead to the loss of the Rohingya population. Even at that time, the Myanmar government lacked the awareness to solve this problem. If this problem becomes the main concern of the government in Burma, human rights violations against Rohingya will soon be resolved. In the context of international law, the government of Myanmar has violated Article 6 of the Rome Statute and Article 2 of the 1948 Genocide Convention on genocide. The government of the state of Myanmar saw an element of genocide in the area, such as the killing of several ethnic Rohingya who deliberately damaged some or all of the living conditions of the Rohingya. According to the results of the investigation, the Myanmar government violated Article 7 of the Rome Statute because it identified elements of crimes against humanity that were experienced by the Rohingya, such as enslavement, forced relocation, or deportation under threat of violence and psychological threats. 

The State of Indonesia and the State of Myanmar mutually recognize human rights as rights that are inherent in humans and whose implementation cannot be revoked or contested. However, in the context of the recognition of human rights from the perspective of international law, there are differences between the two countries. In MPR Decree No.XVII/MPR/1988 concerning Human Rights, it is stated that human rights are basic rights inherent in human beings that are natural and universal by virtue of God Almighty and have the function of guaranteeing survival, freedom, and human development, as well as society, and must not be ignored, seized, or disturbed by anyone who sues them (Marzuki, Suparman, 2017).

Indonesia recognizes the role of international law in universally upholding human rights. Indonesia has a human rights commission (KOMNAS HAM) and Law No. 39/1999 on human rights. KOMNAS HAM Indonesia is an institution established by the Indonesian government to promote, protect, and advance human rights. The institution is tasked with monitoring human rights violations, providing advice and support to victims of human rights violations, and others. Komnas HAM has a role in resolving various human rights issues through investigation, mediation, counseling, and supervision. Besides that, Law 39 of 1999 also shows the government's concern for the interests and protection of human rights for its
citizens to the fullest extent as a form of Indonesia's moral and legal responsibility as a member of the United Nations. Some of the things regulated in Law Number 39 of 1999, namely the preamble of the 1945 Constitution, Articles 27 to 34 of the 1945 Constitution, protection of privacy rights, law enforcement of human rights violations in Indonesia, implementation of the provisions of Article 27 paragraph (2) of the 1945 Constitution in practice, are forms of human rights protection. The Indonesian government is committed to better protection of human rights and has taken several steps to address this issue. However, there are still challenges in implementing and defending human rights in Indonesia, and this is a problem both at the national and international levels. Besides that, Article 28I, paragraph 4, of the 1945 Constitution states that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of a state. The human rights court in Indonesia is an ideal legal space to carry out a state's responsibility for human rights (Sinaga, T. B., 2018).

According to Law Number 39 of 1999, human Rights are a set of rights that are inherent in the nature and existence of humans as creations of God Almighty and are gifts from God that must be respected, loved, and protected by the state. Government, law, and everything else to protect human honor and dignity. As explained in Law No. 39 of 1999, human rights are rights that are inherent in humans from birth and must be respected by all people, including those in authority. Based on the law, human rights can provide moral strength to protect and also guarantee human dignity, not based on circumstances, tendencies, or certain political wills. Upholding human rights is very important for Indonesian society because human rights are related to human dignity and the value of wholeness. Human Rights in Indonesia are closely related to the founding of the Indonesian state, namely Pancasila, which is listed in second place. In Indonesia, human rights are highly respected because it is one of the characteristics of the Indonesian state as a legal state that always upholds the human dignity of the Indonesian nation. Therefore, the enforcement and protection of human rights in Indonesia are strictly monitored and enforced. The implementation and protection of human rights in Indonesia took place on November 6, 2000, when the People's Representative Council (DPR) passed Law No. 26 of 2000, which was promulgated on November 23, 2000. (Arifin, R., Lestari, L. E., 2019).

Human rights violations related to ethnic cleansing are specifically contained in the Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted in United Nations (UN) General Assembly Resolution 260 A (III) on December 9, 1948.
Human rights violations were committed against the Rohingya ethnic group. This is supported by a report on findings from the investigation by the Special Rapporteur on Komnas HAM, based on the latest report, namely the United Nations Rapid Report on Human Rights dated February 3, 2017. It said in the report that there were executions without trial or massacre, including random shootings, violent kidnappings, and arbitrary arrests, which could also include rape and other forms of sexual violence such as physical violence, assault, degrading or humiliating treatment or punishment, property damage, ethnic discrimination, and persecution. An article on the realization of the human rights of the Rohingya ethnic group in Myanmar said that the protection of human rights for the Rohingya ethnic group in Myanmar is still lacking, indicating that Myanmar needs to improve and promote awareness of human rights in the country and also in relation to a country's international relations. (Yuliartini, N. P. R.; Mangku, D. G. S., 2019).

The human rights violations in Myanmar mentioned in the report of the Human Rights Council constitute crimes against humanity in the country of Myanmar under Article 7 of the 1998 Rome Statute. These human rights violations are evidence of a failure to promote universal respect and obedience. In addition, the policy of the Myanmar government in issuing the 1974 Immigration Act and the 1982 Citizenship Act was contrary to the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD). The 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD) is an international agreement aimed at eliminating all forms of racial discrimination in the world. Even though Indonesia has ratified this convention, there are still many laws and regulations that are gender-specific or gender neutral and do not even consider the interests of women. On the other hand, this policy is very contrary to Article 15(1) of the Human Rights Convention, which states that everyone has the right to citizenship. On the other hand, Myanmar has been a member of the United Nations since 1948. The legal consequence of a country's membership in the United Nations is that it is obliged to accept all the provisions and regulations of the United Nations Charter. (Mangku, D. G. S., 2021).

As a sovereign country, Myanmar has an obligation to provide legal protection to its citizens. The government of Myanmar must immediately resolve cases of alleged violations of human rights against Rohingya people in order to respect and protect human rights. If there are no effective steps taken by the government of Myanmar to provide protection to the Rohingya,
then the international legal mechanism is an alternative that can be used as a guideline to provide protection for human rights for the Rohingya in Myanmar. Regarding the comparison of human rights in Indonesia and Myanmar, according to Thor B. Sinaga, in a journal article discussing the role of international law in upholding human rights, Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally inherent and inalienable. Indonesia also recognizes the role of international law in upholding human rights. (Sinaga, T. B., 2018).

Apart from that, some stated in a news article that Indonesia has a human rights court, which is a court to fulfill the country's human rights obligations. Human rights courts operating in Indonesia are ideal courts to carry out human rights responsibilities in a country. Comparing the protection of human rights in Indonesia and Myanmar has been a major concern in human rights studies. In the literature to date, there are many issues that can affect the protection of human rights in the two countries. In the book "Women's Rights and Gender Equality in Indonesia: A Study of Progress and Challenges, written by Kusumasari in 2017, shows various challenges in protecting the rights of women, especially in Indonesia. This book addresses issues such as gender violence, economic inequality, and discrimination in access to education and health. (Kusumasari, B., 2017).

Currently, the implementation of human rights in Indonesia faces several developments and challenges. Several things are the main focus in the development of human rights at the present time, namely, the Government of Indonesia has issued laws and established institutions to protect human rights. Efforts to protect fundamental rights, women's and children's rights, and minority rights have been carried out, although there are still challenges in implementing these rights consistently in all regions of Indonesia. Freedom of the press is also important in safeguarding democracy and human rights, but there are still restrictions and prosecutions against journalists regarding these rights. The implementation of human rights in the country of Myanmar at this time has also progressed compared to the past, when there were many violations of human rights in that country even though they had not yet been resolved. Besides that, the implementation of human rights in Myanmar at the present time is also very worrying. That is because the military coup that occurred in 2021 has resulted in political repression, human rights violations, and a serious humanitarian crisis.
Myanmar's military is accused of systematic violence and violations of human rights, including mass detentions, torture, and executions without trial. The international response to this situation has included condemnation, sanctions, and diplomatic efforts to restore democracy and protect the Burmese people. It is important to continue to monitor developments in Myanmar and support efforts to protect human rights and restore democracy in the country.

Through an in-depth understanding of the problems faced by Indonesia and Myanmar in the protection of human rights, it is hoped that knowledge will be created and collected regarding comparisons in these two countries and can make an important contribution to efforts to increase the protection of human rights in the two countries, namely human rights in Indonesia and in other countries. the country of Myanmar.

3. Conclusion

The Republic of Indonesia and the State of Myanmar are both members of ASEAN. From the perspective of international law, the two countries have differences in the enforcement of human rights. This difference can be seen from the enforcement of laws, such as regulations and laws that regulate human rights in the country, and from the number of violations that have occurred and the way the government has handled these problems. Differences in the implementation of human rights in the two countries are like national laws, where the Indonesian state has Law No. 39 of 1999 concerning human rights and also KOMNAS HAM, which is a guideline for the implementation of human rights in Indonesia. In contrast to Myanmar, the law governing human rights in Myanmar is the Myanmar Constitution. The constitution stipulated a number of basic human rights that were protected by the state at the time. On the other hand, there are those who say that the State of Myanmar, which until now has no proper regulations to regulate human rights in it, is guided by universal or international regulations to implement human rights in their country.

The similarities in the implementation of human rights in Indonesia and Myanmar can be seen in the constitutions of these two countries. Both Myanmar and Indonesia have constitutional provisions that guarantee the protection of human rights. The Myanmar constitution includes provisions on basic rights; the Indonesian constitution also contains human rights and guarantees its citizens several basic rights. The two countries have signed international human rights treaties. Myanmar has ratified several major international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination
Against Women (CEDAW) and the Convention on the Rights of the Child. Myanmar faces significant human rights challenges, particularly regarding the treatment of ethnic and religious minorities such as the Rohingya ethnic community. In Indonesia, human rights issues include freedom of religion, minority rights, and challenges related to law enforcement in some areas. Since the creation of this journal, the authors have made recommendations so that the two countries can strengthen their commitment to international human rights standards and ensure their effective implementation through appropriate laws and policies. Concrete steps can be taken in both countries to protect minority rights, including the elimination of discrimination, recognition of minority group identities, and equitable access to public services. Both countries must increase transparency and accountability in public policies related to human rights by ensuring access to public information, the participation of civil society, and independent judicial mechanisms. Educating and empowering people about human rights is important to create a better understanding and awareness of the importance of these rights.
Reference

Book:


Marzuki, Superman, 2017, Human Rights Law, center for human rights studies at the Indonesian Islamic University (PUSHAM UII), Yogyakarta


Journal:


http://journal.yiil.org/home/archives_v15n2_10


