



**THE DEVELOPMENT OF RESPECT AND PROTECTION OF HUMAN DIGNITY
IN HUMAN RIGHTS LAW IN EMERGENCY SITUATIONS IN
INTERNATIONAL LAW AND THEIR LINK WITH TRADITIONAL VALUES IN
INDONESIA**

Arief Fahmi Lubis

Military Law College – PTHM/AHM

Jalan Matraman Raya No. 126, Central Jakarta

arieffahmilubis0@gmail.com

Abstract

In the context of an emergency situation such as a social conflict or war, such respect and protection must also be extended to those who are on the opposite side of us. The concept of respecting and protecting human dignity is an idea that has existed for a long time and has become an integral part of human civilization to show that the concept of respecting and protecting human dignity is universal. local customs and wisdom. This research problem on how the development of respect and protection of human dignity in emergency situations in international law and how the efforts of the International Committee of the Red Cross (ICRC) in seeking international law affinity in the above context with customary values. Qualitative research uses a descriptive approach to collect data systematically, factually, and quickly according to the description when the research is carried out. The results of this study indicate that *First*, Over time, the concept of respecting and protecting human dignity has also become an inseparable part of international law, *Second*, that the concept of respecting and protecting human dignity is an idea that has existed for a long time and has become an integral part of human civilization, *Third*, each regulation, which is developed in a simple manner, will be complemented by relevant religious customs and norms that are present in various forms in Indonesia where there is a wealth of relevant local traditions, known as adat originating from a rich cultural heritage and diverse influences.

Keywords: International Humanitarian Law, Human Rights Law, Human Dignity.

Introduction

Ideas about respect and protection of human dignity in emergency situations, including especially when armed conflict, is a fairly old idea. The idea has developed since thousands of years ago since the various ancient civilizations that existed in the world. Over time, these ideas were formulated in various relevant international legal regimes. Specifically, the Humanitarian Law regime and the Human Rights Law regime are two



international legal regimes that mostly encapsulate these ideas into various legal instruments within each regime. However, this is not widely known by many parties who actually think that the above idea is a "modern invention" by only a few countries, especially after World War II. Interestingly, not only is this idea not new, the essence of the concept of protecting human dignity is also very universal and is very likely to be found in various customs and cultures in the world. This article has two main parts of the problem, namely; First, this article will briefly review how the development of respect and protection of human dignity in emergency situations in international law. Second, this article will convey how the efforts of the International Committee of the Red Cross (ICRC) in seeking international law linkages in the above context with customary values, This article will briefly review how the development of respect and protection of human dignity in emergency situations in international law. Second, this article will convey how the efforts of the International Committee of the Red Cross (ICRC) in seeking international law linkages in the above context with customary values, This article will briefly review how the development of respect and protection of human dignity in emergency situations in international law. Second, this article will convey how the efforts of the International Committee of the Red Cross (ICRC) in seeking international law linkages in the above context with customary values, This research was conducted using a normative juridical research method¹by conducting a comprehensive study based on laws and regulations as well as empirical juridical research, namely conducting studies based on observations of the handling of respect and protection of human dignity in emergency situations, including especially during armed conflicts.

Data processing is done qualitatively. The written legal materials that have been collected are then systematized according to the problems studied. Furthermore, the legal material is reviewed and described in accordance with the problem using the relevant theoretical basis. To answer the problem, the legal material that has been systematized is then carried out an assessment so that it can answer correctly the meaning and position and legal implications of the State Policy in the Indonesian constitutional system.

¹Soerjono Soekanto and Sri Mamudji, (1994), Normative Legal Research A Brief Overview, (Jakarta: Raja Grafindo Persada) h. 28



International Law Linkages with Customary Values in Indonesia regarding the Respect and Protection of Human Dignity.

Over time, the concept of respecting and protecting human dignity has also become an inseparable part of international law.² In fact, Professor Ian Brownlie states that humanity is the source of international law.³ As a branch of international law, Humanitarian Law is the main entry point in this context. This section of the article briefly explores the inclusion of the concept of fundamental humanitarian considerations in international law, including in particular humanitarian law. We can see the application of basic humanitarian considerations in the context of international relations and law in the mid-19th century. During the Crimean War of 1855, the use of sulfur as a weapon was proposed. The same thing was proposed by the Union Forces in 1862 during the United States Civil War. However, both proposals were ultimately rejected and sulfur was not used as a weapon in either situation.⁴

Furthermore, in 1863 there were two important events that were closely related to the basic affirmation of the affirmation of basic humanitarian considerations in international law, namely; First, the issuance of the Lieber Code by the United States Government during the Civil War.⁵ The Lieber Code, which is a general instruction for the United States armed forces, sets the principle of humanity as the main pillar. Second, in the same year Henry Dunant and four other Swiss founded the forerunner of what we

² Robin Coupland, “Humanity: What is it and how does it influence international law?”, *International Review of the Red Cross* (Vol. 83, No. 844), 2001, p. 969.

³ Ian Brownlie, *Principles of Public International Law* (Clarendon Press, Oxford, 1998), p. 28. See also Ruti G. Teitel, *Humanity's Law* (Oxford University Press, Oxford, 2011).

⁴ Legality of the Threat or Use of Nuclear Weapons, *International Court of Justice, Dissenting Opinion of Judge Weeramantry*, 8 July 1996, p. 482.

⁵ General Orders No. 100: Instructions for the Government of Armies of the United States in the Field (Lieber Code), April 24, 1863. The Lieber Code was compiled by an expert named Francis Lieber. Further information on the Lieber Code can be found at: Jenny Gesley, *The Lieber Code – the First Modern Codification of the Laws of War*, April 24, 2018, available at <https://blogs.loc.gov/law/2018/04/theliebercodethefirstmoderncodificationofthelawsofwar/#:~:text=Laws%20of%20War,The%20%E2%80%9CLieber%20Code%E2%80%9D%20%E2%80%93%20the%20First%20Modern%20Codification,of%20the%20Laws%20of%20War&text=On%20April%2024%2C%201863%2C%20U.S.,Lincoln%20issued%20%E2%80%9CGeneral%20Orders%20No.&text=The%20Lieber%20Code%20set%20out,throughout%20the%20U.S.%20Civil%20War.>



know today as the ICRC.⁶As an international humanitarian organization mandated to support countries in developing Humanitarian Law, of course the birth of the ICRC in 1863 further emphasized the position of fundamental humanitarian considerations in the development of international law.

Then in 1864 for the first time multilaterally an international treaty governing the protection of war victims was agreed upon by 12 countries and later had 57 states parties. This international agreement is then known as the Geneva Convention of 1864.⁷ Then, in 1868, the Declaration of St. Petersburg on humanitarian grounds prohibited the use of explosive bullets in war. More than three decades later, basic humanitarian considerations are reaffirmed in the Hague Convention of 1899 which regulates respect for the law and customs of war. In particular, the Hague Convention 1899 is a significant momentum because of the Martens Clause in the Preamble of the international treaty. Martens Clause⁸itself is currently accepted as a main pillar in terms of fighting actions for which there are no specific rules, then these actions must be carried out based on the laws of humanity and the requirements of public conscience.⁹

During the diplomatic conference in The Hague in 1907, the formulation of the Martens Clause was again used in the final document of the conference in the form of the 1907 Hague Convention. When the founding states of the United Nations (UN) in 1945 agreed to the UN Charter, basic humanitarian considerations became one of the pillars in the Charter. the. Saving and defending humanity can be said to be one of the main goals of the establishment of the United Nations.¹⁰ Included in the 1948 United Nations Universal Declaration of Human Rights, respect for human dignity is the first point in the

⁶ See more about ICRC History at: <https://blogs.icrc.org/indonesia/abouticrc/history/> and <https://www.icrc.org/en/history> (both accessed on 5 January 2021).

⁷ See more about ICRC History at: <https://blogs.icrc.org/indonesia/abouticrc/history/> and <https://www.icrc.org/en/history> (both accessed on 5 January 2021).

⁸ Convention for the Amelioration of the Condition of Those Wounded in War on Ground (Geneva, 22 August 1864). The full convention can be viewed at: <https://ihldatabases.icrc.org/ihl/INTRO/120?OpenDocument> (accessed January 5, 2021).

⁹ The Martens clause was proposed by an expert from Russia named Professor Fyodor Fyodorich Martens.

¹⁰ Rupert Ticherust, “The Martens Clause and The Laws of Armed Conflict”, *International Review of the Red Cross* (No. 317), April 30, 1997, available at <https://www.icrc.org/en/doc/resources/documents/article/other/57jnhy.htm> (accessed January 5, 2021).

document.¹¹ This shows the centrality of the concept of respect for human dignity based on the spirit of brotherhood in the human rights regime. Then in 1949, when the four Geneva Conventions were adopted,¹² and in 1977, upon the adoption of two Additional Protocols to the 1949 Geneva Conventions,¹³ Countries agree to adapt the Martens Clause into these international instruments. Even in the same year that the four Geneva Conventions were adopted in Switzerland, the International Court of Justice based in The Hague issued a judicial decision in the Corfu Channel case.¹⁴ which basically underscores the importance of fundamental humanitarian considerations which are even more important in times of peace.¹⁵

The Corfu Channel case is a dispute between the United Kingdom and Albania regarding alleged violations of sovereignty by the British Navy against Albania's territorial waters. One of the views of the International Court of Justice in this case is that when Albania does not provide notifications about the position or location of sea mines to countries, this is not in line with basic humanitarian considerations.¹⁶ On another occasion, the International Court of Justice also reaffirmed the central position of the concept of fundamental humanitarian considerations in international relations and law.¹⁷

Although it is clear to some that the concept of respecting and protecting human dignity is a legacy of human civilization at large, there is still a view that this concept because it is currently an integral part of international law is only a modern invention of "Western Culture".¹⁸ Aiming to show that the concept of respect and protection of human dignity is universal, since the late 1990s the ICRC has begun efforts to seek and affirm the

¹¹ Article 1 of the United Nations Charter.

¹² Article 1 of the United Nations Universal Declaration of Human Rights (10 December 1948).

¹³ Article 63 Geneva Convention I 1949; Article 62 Geneva Convention II 1949; Article 142 Geneva Convention III 1949; and Article 158 of Geneva Convention IV 1949.

¹⁴ Preamble to Additional Protocol I 1977 and Article 1(2) of Additional Protocol I 1977.

¹⁵ United Kingdom v. Albania (Corfu Channel Case), Judgment, International Court of Justice (9 April 1949).

¹⁶ Corfu Channel Case, *op. cit.* p. 22; Coupland, "Humanity: What is it and how does it influence international law?", *op. cit.*, p. 970.

¹⁷ Corfu Channel case, *op. cit.*, p. 23.

¹⁸ Resolution XXIII, Final Act of the International Conference on Human Rights (Tehran, 22 April 13 May 1968), United Nations 1968, p. 18.



linkage of international law with customary values and local wisdom in the above matters. The ICRC together with relevant experts have been and are currently conducting research on this link. In 1998, the ICRC conducted the search in the context of the country of Somalia and has published its findings.¹⁹ Then, in 2009 the ICRC instituted a similar effort in the context of the Pacific region.²⁰ Furthermore, in early 2020 the ICRC institution has started a similar search process in the context of traditional values and local wisdom that exist in Indonesia. However, what has been done in the context of Somalia and the Pacific region has focused solely on the war situation. Through the “Human Values” program which was launched at the beginning 2020,²¹ ICRC Jakarta, together with the Indonesian Red Cross (PMI) and related experts, have started an effort to find the link between traditional values and local wisdom regarding respect and protection of human dignity in all situations, including emergency situations, such as social conflicts, natural disasters, or wars. Specifically, the “Human Values” Program focuses attention on the following 10 Values:

- a. Physical and psychological integrity must be respected.
- b. Sexual dignity must be guaranteed.
- c. Children must be protected.
- d. The wounded and sick must be cared for and protected.
- e. Health facilities and personnel must be protected.
- f. Humanitarian assistance for the needy must be facilitated.
- g. Access to education should be facilitated. Educational facilities must be respected.
- h. Individual and community property, including places of worship, must be respected.
- i. Persons deprived of their liberty must be treated with humanity and dignity.
- j. The body must be treated with dignity.

¹⁹ See further eg: Brian Vincent Ikejiaku, “International Law is Western Made Global Law: The Perception of Third World Category”, *African Journal of Legal Studies* (Vol. 6, 2013), p. 337356; Emmanuelle Jouannet, “Universalism and Imperialism: The True/False Paradox of International Law?”, *European Journal of International Law* (Vol. 18, No.3), 2007.

²⁰ ICRC, Spared from the Spear (1998), available at: <https://blogs.icrc.org/somalia/2015/09/21/sparedfromthespear/> (accessed January 5, 2021).

²¹ ICRC, Under the Protection of the Palm: Wars of Dignity in the Pacific (2009), available at: <https://www.icrc.org/en/doc/resources/documents/publication/pwarsofdignitypacific.htm#:~:text=This%20publication%20looks%20into%20behaviour,principles%20of%20international%20humanitarian%20law> (accessed January 5, 2021).



An early reference to Humanitarian Values rather than Humanitarian Law itself will create a simple framework with regard to the basic principles of Humanitarian Law that can be taught outside law school. This program deliberately underlines positive values such as respect for physical/psychological integrity rather than related offences (bad treatment). Each regulation, which is developed simply, will be complemented by relevant religious customs and norms that are present in various forms in Indonesia where there is a wealth of relevant local traditions, known as adat originating from a rich cultural heritage and diverse influences.

Elements of local customs that underline, among others, respect for the enemy, the dignity of women, and others. Although hampered by the COVID-19 pandemic, the initial search process has been carried out in several areas in Indonesia, such as Maluku, West Sumatra, South Sulawesi and South Kalimantan. Based on initial findings obtained until the end of 2020, there is a link between customary values in Indonesia and the concept of respect and protection of human dignity in international law. The following are some examples of such links with Minang and Maluku traditions/cultures. The First Value in the “Human Values” Program is respect for physical and psychological integrity. This value can also be found in Minang traditions and culture in the form of the proverb "Gadang jan malendo, Long don't run over" (Big don't hit, Long don't run over). According to our initial study, this proverb can also be interpreted as a form of prohibition to carry out torture or ill-treatment of people under its control, and is also related to the Ninth Value related to humane treatment of people who are deprived of their liberty. In addition, Minang traditions and culture also recognize the concept that everyone has the freedom to move, whether in times of peace or emergency.²²

Meanwhile, related to the Fourth Value which focuses on helping and caring for those who are injured and sick, Minang traditions and culture also recognize the same thing. Minang proverb “Sakik samo is dazzled; Dead samo dijanguak; Nan rusuah samo

²² Gerard Moussay, *Dictionnaire Minangkabau Indonesia – Français*, Cahier d' Archipel 27 (1995, Vol. I), p. 852; Anas Nafis, *Minangkabau Proverbs* (Intermasa, Jakarta, 1995), p. 287.



seduced; Dikaba good advice; Dikaba badass behambau."²³which means “It hurts to see; Died as visited; The rioters are the same as persuaded; On the good news appealed; On the scattering of bad news” is clearly a wedge regarding help to those who are injured and sick. In the context of Maluku traditions and culture, the concept of “pela and gandong” also has a wedge in respecting and protecting human dignity. As a system in Maluku tradition and culture, pela and gandong” promote brotherhood between groups regardless of social, religious or other background. Based on this main understanding, "pela and gandong" are also recognized as having a central idea which in general puts forward human values in the form of "the life of the Basudara people".²⁴

When linked to Humanitarian Values, this central idea can be sufficient to support not only the First Values to the Fourth Values, but also the Sixth Values related to the facilitation of humanitarian assistance. Reflecting on the brief examples above, we believe that similar findings will be obtained in various traditions, cultures, and customary values that exist in other regions of Indonesia. In developing this program going forward, the ICRC plans to continue its search efforts in other areas of Indonesia, as well as confirming what has been obtained at an early stage. Taking into account the existing limitations, the other regions referred to are Bali (Balinese customs and traditions), West Kalimantan (Dayak customs and traditions), West Java (Sundanese customs and traditions), Central Java/Yogyakarta/East Java (Javanese customs and traditions), Aceh (Aceh customs and traditions), and the Nusa Tenggara region. In addition, the "Human Values" program is specifically intended to be understood more broadly for the general public, not only for certain categories of community groups (for example: legal experts, policy makers, academics, female students, military, and others). This program also does not aim to replace the dissemination material on International Humanitarian Law that is conveyed to members of the armed forces, relevant policy makers, and others. In another sense, the “Human Values” program complements the existing tools in disseminating the values of

²³ This proverb is also contained in the Law on Domestic People which is traditionally a cultural reference in Minang culture. See AB Dt. Madjo Indo, Kato Pusako (Gebu Minang Bogor and MPAAM Jakarta, 1999), p. 108.

²⁴ Yakob G. Malatuny and Samuel P. Ritiauw, “The Existence of Pela Gandong as Civic Culture in Maintaining Community Harmonization in Maluku”, *Socio Didactics: Social Science Education Journal* (Vol. 5 No. 2, 2018), p. 39.



respect and protection of human dignity more broadly in all circumstances. Of course, input and suggestions from various parties, including the readers of this media, will be very helpful in developing this program. Comprehensive inputs and suggestions regarding related customary values will also be very useful in aligning the final product of “Human Values”. In the end, this program is expected to contribute to the understanding of the concept of respect and protection of human dignity for various groups and the general public.

Conclusion.

This research has briefly reviewed the concept of respect and protection of human dignity in international law. As a concept that has existed in various human civilizations in the world since ancient times, respect and protection of human dignity has finally become an inseparable part of international law. Over time, International Law, especially Humanitarian Law and Human Rights Law has a main pillar in the form of human values where these values are universal. Although this understanding is understood by some groups, there are still parties who view that basic human values are only inherited from certain cultures. Through several efforts over the past 20 years, The ICRC has endeavored to demonstrate that the respect and protection of human dignity as understood in international law is also found in the traditions and cultures of the world. It is recommended that the ICRC "Human Values" Program seeks to find a wedge between traditional and customary values in Indonesia and the concept of respecting and protecting human dignity. Through these efforts, it is hoped that the concept of respect and protection of human dignity can encourage more recognition and understanding of the concept in society. It is recommended that the ICRC "Human Values" Program seeks to find a wedge between traditional and customary values in Indonesia and the concept of respecting and protecting human dignity. Through these efforts, it is hoped that the concept of respect and protection of human dignity can encourage more recognition and understanding of the concept in society. It is recommended that the ICRC "Human Values" Program seeks to find a wedge between traditional and customary values in Indonesia and the concept of respecting and protecting human dignity. Through these efforts, it is hoped that the concept



of respect and protection of human dignity can encourage more recognition and understanding of the concept in society.

Thank-you note.

The researcher would like to thank those who provided data, information and time support in enriching the material during the research/writing of this article.



Bilbography

Adji, Oemar Seno, (1977). *Mass Media and Law*, PT. Erlangga. Jakarta.

Oemar Seno Adjie, (1997), *Judicial Power in Indonesia Since Returning to the 1945 Constitution*, in Benny K. Harman, *Political Configuration and Judicial Power in Indonesia*, Jakarta: Elsam,.

Soerjono Soekanto and Sri Mamudji, (1994), *Normative Legal Research A Brief Overview*, (Jakarta: Raja Grafindo Persada).

Gerard Moussay, (1995), *Dictionnaire Minangkabau Indonesia – Français*, Cahier d' Archipel 27 (1995, Vol. I); Anas Nafis, *Minangkabau Proverb* (Intermasa, Jakarta).

AB Dt. Madjo Indo, Kato Pusako (Gebu Minang Bogor and MPAAM Jakarta, 1999).

Yakob G. Malatuny and Samuel P. Ritiauw, “The Existence of Pela Gandong as Civic Culture in Maintaining Community Harmonization in Maluku”, *Socio Didactics: Social Science Education Journal* (Vol. 5 No. 2, 2018).

United Nations Universal Declaration of Human Rights (10 December 1948).

Geneva Convention I 1949; Article 62 Geneva Convention II 1949; Article 142 Geneva Convention III 1949; and Article 158 of Geneva Convention IV 1949.

Preamble to Additional Protocol I 1977 and Article 1(2) of Additional Protocol I 1977.

United Kingdom v. Albania (Corfu Channel Case), Judgment, International Court of Justice (9 April 1949).

Corfu Channel Case; Coupland, “Humanity: What is it and how does it influence international law?”, *op. cit.*, p. 970.

Vincent Chetail, “The Contributions of the International Court of Justice to International Humanitarian Law”, *International Review of the Red Cross* (Vol. 85, No. 850), 2003, available at: https://www.icrc.org/en/doc/assets/files/other/irrc_850_chetail.pdf (accessed January 5, 2021).

Resolution XXIII, Final Act of the International Conference on Human Rights (Tehran, 22 April 13 May 1968), United Nations 1968.

Brian Vincent Ikejiaku, “International Law is Western Made Global Law: The Perception of Third World Category”, *African Journal of Legal Studies* (Vol. 6, 2013), p. 337356; Emmanuelle Jouannet, “Universalism and Imperialism: The TrueFalse Paradox of International Law?”, *European Journal of International Law* (Vol. 18, No.3), 2007.

ICRC, *Spared from the Spear* (1998), available at: <https://blogs.icrc.org/somalia/2015/09/21/sparedfromthespear/> (accessed January 5, 2021).

ICRC, *Under the Protection of the Palm: Wars of Dignity in the Pacific* (2009), available at:

<https://www.icrc.org/en/doc/resources/documents/publication/pwarsofdignitypacific.htm#:~:text>

=This%20publication%20looks%20into%20behaviour,principles%20of%20international%20humanitarian%20law (accessed January 5, 2021).



Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, International Court of Justice, 8 July 1996.

Legality of the Threat or Use of Nuclear Weapons, Dissenting Opinion of Judge Weeramantry, International Court of Justice, 8 July 1996.

Legality of the Threat or Use of Nuclear Weapons, International Court of Justice, Dissenting Opinion of Judge Weeramantry, 8 July 1996.

Robin Coupland, “Humanity: What is it and how does it influence international law?”, *International Review of the Red Cross* (Vol. 83, No. 844), 2001.

Ian Brownlie, *Principles of Public International Law* (Clarendon Press, Oxford, 1998), p. 28. See also Ruti G. Teitel, *Humanity's Law* (Oxford University Press, Oxford, 2011).

General Orders No. 100: Instructions for the Government of Armies of the United States in the Field (Lieber Code), April 24, 1863. The Lieber Code was compiled by an expert named Francis Lieber. Further information on the Lieber Code can be found at: Jenny Gesley, *The Lieber Code – the First Modern Codification of the Laws of War*, April 24 2018, available at

<https://blogs.loc.gov/law/2018/04/theliebercodethefirstmoderncodificationofthelawsofwar/#:~:text=Laws%20of%20War,The%20%E2%80%9CLieber%20Code%E2%80%9D%20%E2%80%93%20the%20First%20Modern%20Codification,of%20the%20Laws%20of%20War&text=On%20April%2024%2C%201863%2C%20U.S.,Lincoln%20issued%20%E2%80%9CGeneral%20Orders%20No.&text=The%20Lieber%20Code%20set%20out,throughout%20the%20U.S.%20Civil%20War.>

<https://blogs.icrc.org/indonesia/abouticrc/sejarah/> and <https://www.icrc.org/en/history> (both accessed on January 5, 2021).

Convention for the Amelioration of the Condition of Those Wounded in War on Ground (Geneva, 22 August 1864). The full convention can be viewed at: <https://ihldatabases.icrc.org/ihl/INTRO/120?OpenDocument> (accessed January 5, 2021).

Rupert Tischerust, “The Martens Clause and The Laws of Armed Conflict”, *International Review of the Red Cross* (No. 317), April 30, 1997, available at <https://www.icrc.org/en/doc/resources/documents/article/other/57jnhy.htm> (accessed January 5, 2021).