

## **Implementation of The Responsibility To Protect Doctrine In Humanitarian Intervention**

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### **Abstract**

The development of the international political situation in the 20th century marked a paradigm shift regarding state sovereignty. Interaction with the international community has become very open, and even seems to reduce restrictions on a country's freedom of action, including in terms of upholding human rights. The occurrence of various crimes against humanity, such as mass murder, ethnic massacres, and various other war crimes, gave rise to a reaction from the international community to respond to the situation by carrying out humanitarian intervention for the human rights violations that occurred. The Responsibility to Protect doctrine is one of the principles upheld by the international community which aims to protect every citizen from the threat of crimes against humanity. Based on this doctrine, the international community also has a responsibility to assist countries to achieve these goals. In this case, the international community can intervene to protect society from war crimes. The application of the doctrine can certainly reduce the concept of absolute sovereignty of a country to the state's obligation to protect its citizens.

**Keywords** : Humanitarian Intervention, Responsibility to Protect, Human Rights

## **Introduction**

As subjects of international law, every country has the privilege of sovereignty, where every country is sovereign to determine, regulate and direct the state's goals to be achieved. In this case, a sovereign state has the right to regulate its internal affairs without interference from the state or other parties (T. May Rudy, 2002). The Westphalian concept of state sovereignty refers to the state's right to political independence and non-interference in the affairs of other states. However, the recognition of the absolute sovereignty of a country experienced a very big paradigm shift, along with developments in the situation of international society in the nineteenth century.

In terms of protecting human rights, the 20th century is also said to be the century of "mass murder" (Rahayu, 2012). Tens of millions of people have lost their lives due to crimes against humanity, such as war crimes, mass murder and ethnic genocide. Most incidents of human rights violations are actually carried out by the state as the holder of sovereignty using its potential for violence. The concern of the international community to take part in resolving humanitarian conflicts is difficult to do, considering the principles of state sovereignty and non-intervention. On the other hand, the international community has a moral obligation to protect and maintain international peace and act firmly against crimes against humanity. In this case, the protection of civil society by the international community in the context of humanitarian intervention often clashes with the principle of state sovereignty. This is what encourages new thinking and formats in human rights protection that can link the obligation to protect civil society from human rights violations on the one hand and state sovereignty on the other.

UN Secretary General Koffi Anan in 1998 called on the international community to take intervention steps to stop the various human rights violations that occurred. The intervention steps established through this agreement are based on universal and legal principles and within the framework of international law to protect society from crimes against humanity. (Boer Mauna, 2011). As a middle way to end the conflict, the doctrine of Responsibility to Protect was born by Francis Deng and several experts. Through the UN High Level Conference (Summit) in 2005, countries in the world agreed to uphold the Responsibility to Protect doctrine. As a form of international community agreement, the Responsibility to Protect Doctrine is contained in Paragraphs 138 and 139 of the 2005 World Summit Outcome Document, and was reaffirmed by the UN Security Council in Resolution S/RES/1674 and re-elaborated in January 2009 by the UN Secretary General, Ban Ki -Moon in his report entitled Implementing the Responsibility to Protect.

The Responsibility to Protect doctrine was not born just like that, but was a response to a series of crimes against humanity that occurred, where the world was shocked by the crimes against humanity that occurred in Bosnia, Rwanda and Kosovo in 1990. (Norilla, Eddy Mulyono, 2018). Broadly speaking, the

Responsibility to Protect doctrine aims to prevent mass destruction, war crimes, ethnic cleansing and crimes against humanity. Based on the doctrine, every country has a responsibility to protect its people from these crimes. In fact, to protect society, the international community also has a responsibility to intervene in order to save society from acts of mass destruction and other crimes against humanity.

### **Humanitarian Intervention**

Historically, states were the only subjects of international law at the beginning and growth of international law, considering that the initial concept of international law was to regulate relations between states and states. The state has advantages compared to other subjects of international law, namely sovereignty. International Law itself was born as a form of reflection of state sovereignty. This means that international law is based on the mutual agreement of sovereign states, namely the international community who are equal to each other as subjects of international law. (Huala Adolf, 2002). The principle of a country's sovereignty is so fundamental that the International Court of Justice has made the principle of state sovereignty a fundamental principle in international community relations.

To ensure that the principle of state sovereignty can be applied, the principle of non-intervention was born. In general, intervention is interpreted as an action taken to interfere in the internal affairs of another party. In the context of international law, intervention is a form of intervention by a state in the internal affairs of another state. United Nations. The UN has explicitly prohibited any intervention against other countries. Article 2 (7) of the UN Charter states that UN organizations are prohibited from interfering in the domestic affairs of a country, except in the context of maintaining world peace.

The development of the international political has apparently had an influence on the existence of the principle of state sovereignty. Today, it is very difficult for a state, in the interests of the international community, not to accept the restrictions imposed on freedom of action within the framework of state sovereignty. As is known, most countries in the world participate in membership of international organizations in which there are rights and obligations that must be obeyed while basically limiting the broad freedoms of countries. Based on the provisions in CHAPTER VII of the UN Charter, it is stated that sovereignty is not an obstacle for the Security Council to make efforts to respond to threats to world peace. In other words, state sovereignty as regulated in the UN Charter will support efforts to realize international security and peace.

Other restrictions relate to restrictions by custom and treaty obligations, both in international law and in international relations. Every country that enters into an agreement cannot neglect its international obligations, even for reasons of state sovereignty. J.G. Starke said that state sovereignty is more accurately described as the remainder of the power that a state has within the limits determined by international law. (J.G. Starke, 2000).

Humanitarian intervention was a response to humanitarian tragedies that occurred in the 1990s, such as in Cambodia, where around two million people were murdered under the Khmer Rouge regime led by Polpot, mass murders in Bosnia from 1992 to 1995, Somalia, Rwanda, Congo , and Kosovo (Lily Husni Putri, 2015). Humanitarian intervention is basically an action against another country or across countries with the aim of preventing or ending serious violations of human rights and crimes against humanity that occur in a country's territory without the permission of that country. This intervention is carried out by forcing the intervened country to implement policies that prioritize humanitarian values.

Considering its nature as a violation of a country's sovereignty, humanitarian intervention is an extraordinary action. Therefore, there are several provisions that must be fulfilled before carrying out humanitarian intervention, namely: (Simon Duke, 1994)

- a. here have been serious human rights violations, meaning that humanitarian intervention can be implemented if there are serious human rights violations in accordance with the Rome Statute, namely, genocide, crimes against humanity, war crimes and crimes of aggression.
- b. Crimes against humanity are widespread and systematic, meaning that crimes against humanity are carried out continuously and systematically.
- c. Authorization of the security council, meaning that before giving authority to carry out an intervention, the UN Security Council must ensure that the country that will intervene is a threat to international peace.
- d. Carried out without another purpose or interest, meaning that humanitarian intervention must be carried out without any other purpose other than protecting humanity.
- e. Humanitarian interventions must be proportionate and have a specific timeframe.

Even though it has not yet been regulated in international law, the implementation of humanitarian intervention still has a legal basis. Article 2 of the UN Charter, which basically prohibits various forms of intervention, still makes exceptions to intervention in the context of realizing international peace. In CHAPTER VI Article 33 of the UN Charter, the UN has the mandate to resolve conflicts through all forms of efforts peacefully. Article 50 regulates the form of intervention, where the intervention is carried out in the context of conflict resolution. Humanitarian intervention is not a violation of a country's freedom and does not violate the UN Charter. Humanitarian intervention is carried out collectively under the mandate of the UN itself.

### **Development of the Responsibility to Protect Doctrine**

The Responsibility to Protect doctrine was basically born out of the international situation, namely that the international community had failed to prevent mass murder and crimes against humanity in several countries. The spirit

of decolonization that emerged after World War II became the basis for the international community's agreement to no longer display incidents of mass murder and crimes against humanity. However, since the end of the 20th century, there has been a change in the character of modern conflict, where this conflict does not only involve between countries, but also internal conflict within a country. The ratio of the number of civilians who became victims increased from 10 percent at the beginning of the 20th century to 90 percent in 2000. In the 1990s, the world was again shocked by the mass killings that occurred in Bosnia and Rwanda. Millions of citizens were victims of this tragedy, and once again the international community was said to have failed to prevent this incident from happening.

The strongest reason for this failure was the differences in views between the countries that founded the UN, which resulted in countries being divided into two groups that debated whether or not to intervene. On the one hand, there is a view that it is an obligation for the international community to intervene if mass destruction and crimes against humanity occur. On the other hand, there is also a view that still adheres to the Westphalian principle of state sovereignty which refers to the state's right to political independence and non-interference in the affairs of other states.

In the midst of these differences in views, a former diplomat from Sudan who became the UN Special Representative for Internal Displacement issues named Francis Deng expressed a quite different view regarding the principle of state sovereignty. According to him, the idea of state sovereignty is no longer based on the right of each state to do what it wishes without any international interference, but state sovereignty is based on the protection of its people living in the region. In other words, state sovereignty must be built with the concept of sovereignty as responsibility. The state should not take advantage of the rights and authority contained in its sovereignty, but the state must be responsible for protecting the people in its territorial area.

Francis Deng's ideas were then developed further in the International Commission on Intervention and State Savings (ICISS) in September 2002. In line with Deng's ideas, in its report ICISS holds the view that all countries have the primary responsibility to protect their people from mass destruction and crime. war and crimes against humanity. To fulfill this goal, the international community has a responsibility to help countries protect their people. Therefore, the international community can use a series of diplomatic, economic, legal methods, and even the use of military force. Specifically, the use of military force is only possible as a last resort in very extreme and urgent situations.

The increasing pressure from the international community to implement the Responsibility to Protect doctrine led the UN to hold a World Summit in 2005. An important achievement in this conference was the achievement of agreement among world leaders that all countries have a responsibility to protect their people from extermination. mass crimes, war crimes, crimes against humanity, ethnic cleansing. For this reason, they agreed to take collective action when the state failed

to protect its people from these crimes. The commitment of these countries was then outlined in UN General Assembly Resolution No. A/60/I dated 24 October 2005, especially in Paragraphs 138, 139 and 140 as follows:

*Paragraph 138 : every country has the responsibility to protect its people from mass destruction, war crimes, ethnic cleansing and crimes against humanity. This responsibility includes preventing these crimes, including provocation efforts leading to them, through appropriate and necessary means. We accept that responsibility and will are mutually exclusive. The international community, as it should, encourages and assists countries to carry out this responsibility and supports the UN in creating an early warning capability.*

*Paragraph 139 : The international community, through the UN, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in line with Articles VI and VIII of the UN Charter, also to help protect peoples from genocide, war crimes, ethnic cleansing, and crimes against humanity. In this context, we stand ready to take collective, appropriate and decisive action, through the UN Security Council, in line with the UN Charter, including Article VII, on a case-by-case basis and in cooperation with relevant regional organizations as necessary, when necessary. peaceful means are no longer sufficient and national authorities have clearly failed to protect their people from genocide, war crimes, ethnic cleansing and crimes against humanity. We emphasize the importance of the UN General Assembly continuing to consider the responsibility to protect peoples from genocide, war crimes, ethnic cleansing and crimes against humanity and their implications, bearing in mind the principles of the UN Charter and international law. We also intend to commit, as necessary and appropriate, to helping countries build capacity to protect their societies from genocide, war crimes, ethnic cleansing and crimes against humanity and to assist those under pressure both before a crisis and after the outbreak of conflict.*

*Paragraph 140 : we fully support the mission of the Secretary General's Special Advisor for the Prevention of Genocide.*

Based on the International Commission on Intervention and State Savings (ICISS) report, Responsibility to Protect has three responsibilities, namely the responsibility to deal with the causes of conflict, the responsibility to respond to situations where crimes against humanity occur, and the responsibility to develop after crimes against humanity occur. To implement this doctrine, the UN Secretary General, Baan-ki Moon emphasized this doctrine in three pillars, namely (Rahayu, 2012):

- a. Pillar 1: Responsibility to protect the state  
It is the state's responsibility to protect its own people from genocide, war crimes, ethnic cleansing and crimes against humanity, and from all kinds of actions that lead to these types of crimes.
- b. Pillar 2: International assistance and capacity building  
The commitment of the international community to assist countries in carrying out their responsibilities.
- c. Pillar 3: Fast and appropriate response  
It is the responsibility of each UN member state to respond collectively, timely and decisively when a state fails to provide the intended protection.

Of these three pillars, there is the most important dimension of this principle, namely the prevention of mass destruction and various other crimes against humanity. Through this principle, the international community hopes that the world will never again witness mass extermination, war crimes, crimes against humanity and ethnic cleansing.

### **Responsibility to Protect Doctrine in Humanitarian Intervention**

The birth of the Responsibility to Protect Doctrine had a fundamental impact on the international community's paradigm regarding state sovereignty. This paradigm shift is very important in international relations for several reasons. First, sovereignty as responsibility means that state authorities are responsible for protecting the safety and lives of citizens and promoting their welfare. Second, it means that national political authorities are accountable to their national colors and also to the international community through the UN. Third, sovereignty as responsibility means that the state as an agent is responsible for its actions. Again, this principle is very important, considering that the majority of cases of crimes against humanity, ethnic cleansing, mass extermination, were actually carried out by sovereign states using military force.

Basically, the Responsibility to Protect doctrine is a way to unite two concepts between state sovereignty and community protection in the midst of a humanitarian crisis. This principle must include three types of responsibility, namely:

- a. Responsibility to prevent genocide and other crimes against humanity. It is the responsibility of each country as well as the international community to address the causes of conflict, such as poverty, resource dispersion, as well as economic, political and economic pressures.
- b. Responsibility to react or respond to situations where mass murder, ethnic cleansing or crimes against humanity have occurred or are about to occur.
- c. Responsibility for building in the wake of mass murder and crimes against humanity. Individual states and the international community are responsible for providing assistance to communities that have experienced

mass crimes so that they can recover, rebuild and reconcile after conflict occurs.

The application of the Responsibility to Protect doctrine as a norm in international law is often interpreted as a new form of intervention against state sovereignty, especially if it imposes obligations in areas that are traditionally a state's internal affairs. In fact, often all issues that occur within a country's jurisdiction, including serious violations of human rights, are considered domestic affairs of the country that cannot be intervened in by applying international legal norms.

In the context of international law, domestic jurisdiction is a relative concept, where developments that occur in international society will influence the domestic jurisdiction paradigm. In terms of the application of the Responsibility to Protect doctrine, it is closely related to respecting and upholding human rights, which means that the concept of domestic jurisdiction is very limited by international law. Based on the principles of international law, issues related to upholding human rights cannot be separated from the domain of international law. In other words, state sovereignty must be placed within the framework and principles of applicable international law, domestic jurisdiction can no longer be used as an excuse for not upholding human rights.

In implementing the Responsibility to Protect doctrine, several countries, especially developing countries, still view this principle as no different from humanitarian intervention as a form of intervention permitted by international law. This principle is seen as providing an opportunity for foreign parties to take over a country's responsibility in protecting its people, so it is feared that it will give rise to manipulation and politicization by large countries to legalize this intervention. This view cannot be completely blamed, considering the failure of humanitarian intervention in resolving humanitarian conflicts, and also due to differences in views regarding humanitarian intervention. Humanitarian intervention is also considered unable to garner international support. The implementation of humanitarian intervention is sometimes characterized by conflicts of interest from certain countries and is often carried out without a clear mandate and legality. Moreover, humanitarian interventions are often carried out using military force. Ultimately, humanitarian intervention becomes an arena for strong countries' arrogance towards weak countries.

The Responsibility to Protect doctrine does not articulate the right of states to intervene, but rather the responsibility of states to ensure that citizens are protected and the responsibility the international community has to assist states to achieve this goal. Basically, the Responsibility to Protect doctrine does not conflict with general principles recognized in international law. As stated in UN General Assembly Resolution No.A/60/I, especially Paragraphs 138 and 139, this doctrine is recommendatory in nature and does not have binding legal force even though it has moral content to create new international legal norms. This means that this



principle is one of the means that can be used to prevent crimes against humanity. The Responsibility to Protect doctrine does not create new obligations for the state, because basically the obligation to protect the color of the state has been regulated in various international legal instruments, such as humanitarian law, international human rights law (Genocide Convention 1948, Rome Statute, Geneva Convention 1945, and so on).

The Responsibility to Protect doctrine can be implemented in various ways, such as through diplomatic relations, humanitarian assistance, strengthening legal instruments and institutions of countries in need, and other methods as possible in CHAPTER VI of the UN Charter. The international community's responsibility to provide a firm and timely response is also in line with current international legal customs and practices. The use of military force to prevent, stop and resolve crimes against humanity is not required in this principle, because peaceful efforts must first be prioritized. Military force is only used in extreme cases and is a last resort with legitimacy from the UN. According to ICISS, the use of military force in the Responsibility to Protect can only be carried out if six criteria are met, namely:

- a. The action must have a just justification because a mass crime has occurred.
- b. The true goal, namely efforts to end human suffering.
- c. This is the last step because peace efforts, both diplomatic and non-military, have failed.
- d. Based on the validity of the authority with the mandate of the UN Security Council.
- e. Using proportional means, that is, the means used are not excessive both in terms of means and ends in accordance with international humanitarian law.
- f. There is a guarantee of success from the use of military force to stop crimes against humanity.

Even though this doctrine has been accepted within the international community as a means of creating world peace, the implementation of this doctrine still faces quite serious challenges, especially in the use of military force. It is also possible that the implementation of the Responsibility to Protect doctrine is also driven by the political interests of certain countries to gain profit. Apart from that, another challenge faced is the limited international, regional and local capacity to prevent crimes against humanity and violations of this doctrine.

### **Conclusion**

The implementation of the Responsibility to Protect doctrine has shown a fundamental shift in the paradigm of a country's sovereignty, especially in the protection of human rights. This doctrine is a form of limitation of the traditional understanding of state sovereignty, where the state apart from having the right to

regulate its own domestic affairs also has an obligation as part of the international community to protect its citizens, as well as having a moral responsibility to help countries realize protection of human rights. The Responsibility to Protect doctrine has confirmed that the principle of state sovereignty cannot be used as an excuse to prevent the international community from upholding human rights and creating world peace. As one of the principles in protecting human rights, Responsibility to Protect can be said to be a refinement of humanitarian intervention. In this case, intervention from the international community against crimes against humanity in a country is in the context of carrying out its moral responsibility to prevent and stop crimes against humanity.\*\*\*

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