



International Legal Review of Black Discrimination in the United States

Bintang Oktrian Mahafi; Joko Setiyono

Faculty of Law, Diponegoro University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i8.6176>

Abstract

An enduring manifestation of racial prejudice throughout the globe is shown by the 2020 incident with George Floyd. The occurrence of this tragedy prompted the American people to endorse the Black Lives Matter Movement. What is the perspective of international law on the issue of racial discrimination against Black individuals in the United States? What is the United States' legal obligation under international law regarding its responsibility for racial discrimination against black individuals inside its borders? The Universal Declaration on Human Rights (UDHR) expresses the collective determination of the international community to eradicate racial discrimination, as emphasized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Under international law, the United States is accountable for racist acts that take place within its borders. This accountability implies that the United States aims to leverage its regained moral authority to foster a global agreement on American values and promote the adoption of an anti-racist agenda by foreign nations and intergovernmental organizations.

Keywords: *International Law; Discricket; Blacks; United States*

Introduction

Human rights are fundamental to every individual since birth. The human rights theory is, in essence, an expression of belief that each individual is of global importance in the realm of global public political morality.¹ Based on that understanding, it can be concluded that everyone in the global community has the right to rights, where their human rights are recognized and fulfilled as they should be. Human rights can be universally proclaimed because they are acknowledged and appreciated by individuals of all the global origins, cultures, beliefs, and ideologies, all of whom feel the need for protection against human rights.²

Marginalization, also known as social exclusion, refers to the conditions in which a certain group of individuals in the social community face exclusion or isolation from society. Minority populations often feel the alienation of the culture of the majority that thinks they are more dominant. Social exclusion refers to a society's failure to include all groups and people within the bounds of society's norms and

¹ Charles R. Beitz, *The Idea of Human Rights* (New York: Oxford University Press, 2009), 147.

² Eva Brems, *Human Rights* (Den Haag: Martinus Nijhoff, 2001), 10.

expectations³ Often minority groups are socially marginalized because their skin color is perceived to be distinct from the dominant group. This scenario could be categorized as racism or racial prejudice. The emergence of social injustice in the lives of minority groups in contemporary societies may have been caused by the long-term effects of the colonial era, known as the butterfly effect. The socio-economic hierarchy within the United States between whites and blacks may have been caused by the historic effects of colonialism and enslavement carried out by the country's first white population.⁴

The enduring manifestations of racial prejudice worldwide are indicated by the 2020 incident of George Floyd. George Floyd, an African-American demonstrator from Minneapolis, had previously actively participated in black lives matter. Next, he bought cigarettes and aroused suspicion from the shop clerk because of alleged use of counterfeit currency. This is where it all began. Next, law enforcement officers came to the scene in response to complaints about ongoing criminal activity, and ordered George to exit the vehicle. He was threatened with a firearm while inside the vehicle. Then, Derek Chauvin pulls George out of the vehicle and then releases him to the ground after being handcuffed. Chauvin positioned his knees around his head and neck, while other policemen held back his back and disabled his leg. George had no tendency to say no. The man repeatedly expressed inability to breathe, but the police ignored his request until he died of asphyxiation.⁵

The tragedy encouraged the American people to support the black lives matter (BLM) movement, while also giving significant awareness of the systemic racism of American culture. The main purpose behind the development of the BLM movement is to actively fight racism and violence aimed specifically at black individuals, especially in the context of police brutality. The term "black lives matter" represents the denunciations of the unjust killing of black individuals by law enforcement (black individuals disproportionately more likely to be victims of police violence than white individuals) and the appeal to the public to acknowledge and respect the lives of black people. And the human black individual. Caucasian race.⁶

This global phenomenon may be linked to chapter 2 of the universal declaration of human rights (UDHR), which states that "all individuals are entitled to the full rights and freedoms expressed in the declaration, without any discrimination based on these factors. Such as race, skin color, gender, language, religion, political beliefs, national or social origin, property ownership, birth, or social status."⁷ UDHR, known as the universal declaration of human rights, is a fundamental standard that has been adopted unanimously by all members of the United Nations as the basis for international human rights governance.

In addition to the fundamental protection outlined in the universal declaration of human rights (UDHR), further international legal measures to overcome racial discrimination can be found in the international convention on the elimination of all forms of racial discrimination (ICERD), established by the United Nations. In 1965. The convention not only defines the concept of racial discrimination but it also claims that the country in which one lives must protect their basic human rights when it comes to racial discrimination. This fundamental protection can be demonstrated by article 2 of the ICERD convention, which states: "sides of the world condemn all manifestations of racial discrimination and try

³Anne Power & William Julius Wilson, "Social Exclusion and the Future of Cities", <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.473.9959&rep=rep1&type=pdf>, (Accessed on April 24, 2024).

⁴Yumna & Selvie, "Diskriminasi Rasial Yang Melatarbelakangi Gerakan Black Lives Matter Di Amerika Serikat Ditinjau Dari Hukum Internasional", *Jurnal Gloria Justicia* 2, no. 1 (2022): 42.

⁵Suara.com, "Kasus George Floyd: Kronologi Kematian hingga Chauvin Divonis", <https://www.suara.com/news/2021/04/21/200456/kasus-george-floyd-kronologi-kematian-hingga-chauvin-divonis>, (Accessed on April 23, 2024).

⁶Frank Edwards, Hedwig Lee Michael Esposito, "Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex", <https://www.pnas.org/content/116/34/16793>, (Accessed on April 23, 2024)

⁷Universal Declaration of Human Rights

to implement all appropriate actions to immediately eliminate racial discrimination in all its forms and foster understanding among all RACES.⁸

Formulation of the Problem

Based on the above description, this article will consider:

1. How does international law view the phenomenon of black discrimination in the United States?
2. What is America's responsibility against black discrimination that occurs in its country by international law?

Research Method

The method of research used in this study is the normatif juridical approach or law research literature, to collect secondary data for the study. These materials come from sources including laws, rules, legal theories, and principles.⁹ The writer intended to further undertake this study based on previous background explanations. To review and analyze the international law against black disintegration in the United States.

Discussion

A. International Legal View of the Phenomenon of Black Discrimination in the United States

The legal framework and tools governing individual rights and responsibilities enable them to collaborate effectively in society. The importance of protection of this law lies in its ability to enforce the law immediately if individual rights are violated.¹⁰

The international community aims to eliminate racial discrimination, as evidenced by a presentation on the topic and the universal declaration of human rights (UDHR). The UN declaration on the elimination of all forms of racial discrimination presented to the UN general assembly on November 20, 1963 by resolution of 1904 (XVIII) further defined that goal. The declaration has to do with the settling of disputes over racial discrimination, with the aim of eliminating any form of racial discrimination by government or community. It also attempts to halt the spread of propaganda that promotes racial or colored superiority, as well as any action a country can take to eliminate racial discrimination. Nevertheless, the proclamation had no legal power; It only serves as a political affirmation. Thus, the UN human rights commission drafted an international convention on the elimination of all forms of racial discrimination, which was ratified by the UN general assembly on December 21, 1965.¹¹

The UN general assembly adopted the international convention on the elimination of all forms of racial discrimination (ICERD) by resolution No. GA. 2106 (XX) ICERD, also known as the international convention on the elimination of all forms of racial discrimination, is a legally binding agreement signed by the United Nations. It serves as a set of rules and policies aimed at promoting equality and eliminating

⁸ Convention on the Elimination of All Forms of Racial Discrimination

⁹ Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif*. (Jakarta: RajaGrafindo, 1994), p. 13

¹⁰ Lorensia Riri, et al., "Perlindungan Hukum Bagi Warga Masyarakat Terhadap Tindakan Diskriminasi Etnis Menurut Undang-Undang No. 40 Tahun 2008 Tentang Penghapusan Diskriminasi Ras dan Etnis", *Jurnal Lex Administratum* IX, No. 6 (2021): 67.

¹¹ Ester Indahyani Jusuf. "Konvensi Internasional Tentang Penghapusan Segala Bentuk Diskriminasi Rasial Sebuah Kajian Hukum tentang Penerapannya di Indonesia", <https://referensi.elsam.or.id/2014/10/konvensi-internasional-tentang-penghapusan-segala-bentuk-diskriminasi-rasial-sebuah-kajian-hukum-tentang-penerapannya-di-indonesia/>, (Accessed on April 23, 2024).

racial discrimination on a global scale. ICERD is not considered a binding contract because of its dependence on comprehensive international community laws, and it is not only binding to enter into the agreement. The origin of ICERD is linked with the inclusion of racial discrimination as a human rights violation in UDHR, which aims to establish peaceful relations between countries and individuals.¹²

The real meaning of racial discrimination, as found in chapter 1 verse 1, is bribery Icerd, or the international convention on the elimination of all forms of racial discrimination, refers to any forms of differentiation, exception, restriction, or favoritism based on race, skin color, descent, or ethnic or national origin. The goal is to demean or eliminate recognition, attainment, or the establishment of basic human rights and freedoms, with the aim of achieving equality in various aspects of social life, including politics, economics, society, culture, and other areas of social life. There is either discrimination, exclusion, restriction, or choice based on one's race, skin color, ethnicity, and country¹³

Racial discrimination, as defined, has been a significant cause of conflict in various regions of the world. This is confirmed by UN secretary-general kofi annan in his speech at the 51st anniversary of the universal declaration of human rights on December 9, 1999. Annan clearly noted that racial discrimination is a crucial obstacle to global peace¹⁴

The universal declaration of human rights (UDHR) officially adopted the concept of human rights on December 10, 1948. This declaration also educates and promotes the importance of human rights through sustained initiatives at both national and international levels, with a view to achieving universal goals. Recognition and respect from all nations. Member states and stakes dependent under their authority are assured.¹⁵

Article 1 the universal declaration of human rights defines the fundamental concept of equality, which affirms that every individual is basically free and has the same dignity and right from birth. Individuals have rational thinking capacity and moral judgment, and they must interact with each other in the spirit of unity and mutual support. From this analysis, it can be concluded that UDHR upholds the principles of equality, liberty, and brotherhood among all individuals. It might be said that in both individual and social context, everyone has an equal status.¹⁶

UDHR strictly upholds the principle of non-discrimination expressed in chapter 2, which states that "each individual is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind based on race, skin color, gender, language, religion, political or other opinions, national or social origin, property, birth or other status." Moreover, no distinction should be made on the basis of the political position, jurisdiction, or international status of a country, or any other limitation to sovereignty. It guarantees that human rights should be applied universally without discrimination on the basis of any group's affiliation.¹⁷

¹² Lauw Leonardo Chandra Trimulya, "Komitmen Pemerintah Indonesia dalam Penghapusan Diskriminasi Rasial Sebagai Bentuk Implementasi International Convention On The Elimination of All Forms of Racial Discrimination (Studi Kasus Diskriminasi Terhadap Masyarakat Papua)", (Skripsi Fakuultas Hukum dan Komunikasi Universitas Katolik Soegijapranata, 2020), 53

¹³ H.A. Dardiri Hasyim, "Identifikasi Diskriminasi Ras dan Etnis Menurut Undang-Undang No. 40 Tahun 2008 dan Diskriminasi Wanita Menurut Undang-Undang No. 7 Tahun 1984 dalam KUHPERDATA". *Jurnal Hukum De'rechtsstaat* 4, No. 1 (2018): 16.

¹⁴ Defira Martina Adrian, et al., "Diskriminasi Rasial dan Etnis dalam Persepektif Hukum Internasional". *Jurnal Legalitas* 14, No. 1, (2021): 7.

¹⁵ Christine & Anak Agung Sri, "Perspektif Hukum Internasional Dalam Kasus Asian Hate Di Amerika Serikat", *Jurnal Kertha Semaya*, 10, No. 10 (2022): 2424

¹⁶ Hesti Armiwulan, "Diskriminasi Rasial dan Etnis sebagai Persoalan Hukum dan Hak Asasi Manusia". *Jurnal Masalah-Masalah Hukum* 44, No. 4 (2015): 494.

¹⁷ Defira Martina Adrian, et al., "Diskriminasi Rasial dan Etnis dalam Persepektif Hukum Internasional". *Jurnal Legalitas* 14, No. 1 (2021): 5.

Principles of equality and anti-discrimination are explicitly articulated in international agreements on economic, social, and cultural rights (ICESCR), international agreements on civil and political rights (ICESCR), and international conventions on the elimination of all forms of civil and political rights (ICCPR), and the international convention on the elimination of all forms of civil and political rights (ICCPR), and the international convention on the elimination of all forms of civil and political rights (ICCPR), and the international convention on the elimination of all forms of civil and political rights (ICCPR), and the international convention on the elimination of all forms of civil and political rights (ICCPR), Racial discrimination. The international convention on the elimination of all forms of racial discrimination. Based on these principles, any activity that violates the rule of human rights can be identified as a characteristic of human rights abuses, especially those that have to do with racial discrimination.¹⁸

B. The Responsibility of the United States Toward Black Discrimination that Occurs in its Country is International Law

On November 7, 2020, President Joe Biden stated that his government would carry out the task of rejuvenating the moral essence of the United States. He asserted that American voters had given him a mandate "to achieve racial justice and to eradicate systemic racism in the country."¹⁹ Furthermore, he plans to reuse the ethical influence America has to foster global agreements on American principles and encourage foreign countries and intergovernmental organizations to implement anti-racist programs.²⁰

Biden faces a challenging path for the future. He adopted a political environment that was split up into opposing factions. More than seventy million americans voted in favor of Donald trump, associated with the white supremacist ideology. Furthermore, while large Numbers of americans have historically opposed racial reforms in the United States, their resistance to racism at the world level is much more clear. The trump government has responded with great displeasure to human critics of its racist immigration policy and xenophobic, resulting in a withdrawal from the UN human rights council and a refusal to give regular reports to the United Nations convention monitoring organization.²¹

However, the challenges facing the Biden government may be overcome. Despite the potential opposition of congress, the President has great executive power to address systemic racism both domestically and internationally. Moreover, almost a generation ago, the United States officially agreed to and accepted the international conventions on the removal of all forms of racial discrimination (CERD), the international treaty on civil and political rights (ICCPR), and the convention against torture and others. Cruel, inhuman or degrading treatment or punishment (CAT). Thus, an ongoing effort to eradicate systemic racism, both domestically and on a global scale, does not require governments to take any new measures. The United States is bound by a treaty to end systemic racism.²²

To combat systemic racism effectively, we need to take decisive steps to overcome fundamental structures, policies, and practices that contribute to income inequality, health, access and education outcomes, and other areas. On occasion of the international day for the elimination of racial discrimination of the United Nations, the United States reclaims its commitment to address the problem both domestically and internationally. This is to show the global community that truly dedicated human

¹⁸ Christine & Anak Agung Sri, "Perspektif Hukum Internasional Dalam Kasus Asian Hate Di Amerika Serikat", *Jurnal Kertha Semaya*, 10, No. 10 (2022): 2425.

¹⁹ Matt Stevens, "Read Joe Biden's President-Elect Acceptance Speech: Full Transcript.", <https://www.nytimes.com/article/biden-speech-transcript.html>, (Accessed on April 23, 2024).

²⁰ Matt Stevens, "Read Joe Biden's President-Elect Acceptance Speech: Full Transcript.", <https://www.nytimes.com/article/biden-speech-transcript.html>, (Accessed on April 23, 2024).

²¹ H. Timothy Lovelace, "To Restore the Soul of America: How Domestic Anti-Racism Might Fuel Global Anti-Racism", *American Journal of International Law* 115, (2021): 64.

²² Yumna & Selvie, "Diskriminasi Rasial Yang Melatarbelakangi Gerakan Black Lives Matter Di Amerika Serikat Ditinjau Dari Hukum Internasional", *Jurnal Gloria Justicia* 2, No.1, (2022): 51-52.

rights and equality do not hide their own shortcomings, but rather face them openly, honestly, and with a strong determination to make progress. Governments are taking steps to overcome systemic racism:²³

- 1) Promote racial equality in the federal government
- 2) Racism, xenophobia, and intolerance of the American Asian community and the Pacific (AAPI)
- 3) To evaluate the extremism of domestic violence.
- 4) Establishing the position of chief diversity and diversity officer (CDIO) inside the state department.
- 5) Integrate racial justice into U.S. foreign policy goals.
- 6) Providing relief to populations that are historically globally marginalized.
- 7) Advocacy for taking action at the UN human rights council.
- 8) Select a representative of the United States to serve on the committee for the elimination of racial discrimination

Conclusion

The universal declaration of human rights (UDHR) reveals the international community's determination to eliminate racial discrimination. This commitment is enhanced in the UN declaration on the elimination of all forms of racial discrimination, introduced into the international treaty on economic, social and cultural rights (ICESCR), international civil and political cooperation (ICCPR), and the international convention on the elimination of all forms of racial discrimination (ICERD).

According to international law, the United States is responsible for racist ACTS taking place within its borders. This accountability suggests that the United States aims to appeal to the moral authority it reclaims to make a global agreement on American values and encourage the application of anti-racist agendas by foreign nations and intergovernmental organizations. To combat systematic racism effectively, we need to take decisive steps to address institutions, policies, and practices that lead to inequality in income, health, access and education outcomes, and other areas.

Reference

- Adrian, Defira Martina, et al., "Diskriminasi Rasial dan Etnis dalam Persepektif Hukum Internasional". *Jurnal Legalitas* 14, No. 1, (2021): 5-7.
- Armiwulan, Hesti, "Diskriminasi Rasial dan Etnis sebagai Persoalan Hukum dan Hak Asasi Manusia". *Jurnal Masalah-Masalah Hukum* 44, No. 4 (2015): 494.
- Beitz, Charles R, *The Idea of Human Rights*, New York: Oxford University Press, (2009).
- Brems, Eva, *Human Rights*, Den Haag: Martinus Nijhoff, (2001).
- Christine dan Anak Agung Sri, "PERSPEKTIF HUKUM INTERNASIONAL DALAM KASUS ASIAN HATE DI AMERIKA SERIKAT", *Jurnal Kertha Semaya*, 10, No. 10 (2022): 2425.
- Convention on the Elimination of All Forms of Racial Discrimination.
- Edwards, Frank, dan Hedwig Lee Michael Esposito, "Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex", <https://www.pnas.org/content/116/34/16793>, (Accessed on April 23, 2024).

²³ The White House, "Fact Sheet: U.S. Efforts to Combat Systemic Racism", <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/21/fact-sheet-u-s-efforts-tocombat-systemic-racism/> (Accessed on April 23, 2024)

- Hasyim, H.A. Dardiri, “Identifikasi Diskriminasi Ras dan Etnis Menurut Undang-Undang No. 40 Tahun 2008 dan Diskriminasi Wanita Menurut Undang-Undang No. 7 Tahun 1984 dalam KUHPERDATA”. *Jurnal Hukum De’rechtsstaat* 4, No. 1 (2018): 16.
- Jusuf, Ester Indahyani, “Konvensi Internasional Tentang Penghapusan Segala Bentuk Diskriminasi Rasial Sebuah Kajian Hukum tentang Penerapannya di Indonesia”, <https://referensi.elsam.or.id/2014/10/konvensi-internasional-tentang-penghapusan-segala-bentuk-diskriminasi-rasial-sebuah-kajian-hukum-tentang-penerapannya-di-indonesia/>, (Accessed on April 23, 2024).
- Lovelace, H. Timothy, “To Restore the Soul of America’: How Domestic Anti-Racism Might Fuel Global Anti-Racism”, *American Journal of International Law* 115, (2021): 64.
- Power, Anne, dan William Julius Wilson, “Social Exclusion and the Future of Cities”, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.473.9959&rep=rep1&type=pdf>, (Accessed on April 23, 2024).
- Riri, Lorensia, et al., “Perlindungan Hukum Bagi Warga Masyarakat Terhadap Tindakan Diskriminasi Etnis Menurut Undang-Undang No. 40 Tahun 2008 Tentang Penghapusan Diskriminasi Ras dan Etnis”, *Jurnal Lex Administratum IX*, No. 6 (2021): 67.
- Stevens, Matt, “Read Joe Biden’s President-Elect Acceptance Speech: Full Transcript.”, <https://www.nytimes.com/article/biden-speech-transcript.html>, (Accessed on April 23, 2024).
- Suara.com, “Kasus George Floyd: Kronologi Kematian hingga Chauvin Divonis”, <https://www.suara.com/news/2021/04/21/200456/kasus-george-floyd-kronologi-kematian-hingga-chauvin-divonis>, (Accessed on April 23, 2024).
- The White House, “Fact Sheet: U.S. Efforts to Combat Systemic Racism”, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/21/fact-sheet-u-s-efforts-tocombat-systemic-racism/>, (Accessed on April 23, 2024).
- Trimulya, Lauw Leonardo Chandra, “Komitmen Pemerintah Indonesia dalam Penghapusan Diskriminasi Rasial Sebagai Bentuk Implementasi International Convention on the Elimination of All Forms of Racial Discrimination (Studi Kasus Diskriminasi Terhadap Masyarakat Papua)”, Skripsi Fakuultas Hukum dan Komunikasi Universitas Katolik Soegijapranata, (2020).
- Yumna dan Selvie, “Diskriminasi Rasial Yang Melatarbelakangi Gerakan Black Lives Matter Di Amerika Serikat Ditinjau Dari Hukum Internasional”, *Jurnal Gloria Justicia* 2, no. 1 (2022): 42-52.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).