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The Possibility of Unifying Cultural and Legal Restrictions on the Exercise of Human Rights at the Global Level

Abdelrahman Mohammed Alasttal(1)

Abdul Maasba Magassing(2)

Maskun Maskun(3)

Iin Karita Sakharina(4)

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Abstract:

This study aims to demonstrate the possibility of unifying cultural and legal restrictions on the exercise of human rights at the global level by analyzing the concept of human rights and studying the cultural and legal controls and restrictions that govern their exercise in accordance with different national cultures and laws. It also seeks to analyze the relevant texts of the International Bill of Human Rights, using is a comparative analytical method. The results showed that all countries agree on the general concept of human rights, but they differ in the way they exercise them according to the culture and laws of each of them. Therefore, it is not possible to unify cultural and legal restrictions on the exercise of human rights around the world. In addition, the International Bill of Human Rights

(1) Faculty of law - Hasanuddin University (Makassar – Indonesia)
abdelrahman.alasttal@gmail.com

(2) Faculty of law - Hasanuddin University (Makassar – Indonesia)

(3) Faculty of law - Hasanuddin University (Makassar – Indonesia)

(4) Faculty of law - Hasanuddin University (Makassar – Indonesia)

came in flexible and general terms that carry many meanings about the controls and restrictions that govern the enjoyment of human rights. Thus, the International Bill did not definitively address the issue of the difference in cultures and laws between societies in this regard, which is considered a loophole that made western countries work on the globalization of their culture in defining human rights restrictions. Finally, the study recommends the creation of a new international treaty that addresses the gaps and eliminates confusion about the restrictions on the exercise of human rights found in the current International Bill, which considers cultural and legal differences around the world.

Keywords: Human Rights; Culture; Law; Restrictions.

1. Introduction

A. Background of the study

Undoubtedly, Different cultures of countries entail different visions about the concepts of human rights and the controls and restrictions on their enjoyment from one society to another, the concept of human rights is thus one of the complex issues in our modern era, because the concept of human rights is linked to the human conscience on the one hand, and the entity of society on the other. A person's conscience stems from his religion and culture, and the entity of society is determined by its laws and customs. Therefore, the practice of human rights is not absolute, but rather relative. In this context, the International Bill of Human Rights did not often come with clear controls or constrictions on the way human rights are exercised, it left a broad and flexible meaning; thus it can be interpreted in several ways as this study will show.

In this regard, the issue of protecting human rights has received the attention of the international community, which has established treaties to enhance monitoring states' implementation of their obligations to protect human rights (Al-Zarooni, 2019). In this context, the formulation of international human rights law has resulted in widespread interest in human rights at the regional level in Europe, America, Africa, and the Arab world through the organization of agreements with a regional dimension. Thus defining the concept of human rights and their divisions according to regional determinants played a prominent role in integrating human rights into local legislation (Marwan Al-Raisi & Noaman Mahmood, 2023), which gave space for cultural rapprochement between countries of the same region, such as the Arab countries region.

Indeed, throughout the history of civilization, there have been both the notions that all people are created equal in some respects and that all people have some inalienable rights (Gawin M. et al, 2016). Therefore, the belief in the sanctity of human life had antecedents in many of the world's cultures.

As prior to human rights became organized into international law, they went through a series of historical developments, starting with their customary and cultural regulation, then in declarations and constitutional documents, and finally their international regulation (Ibrahim, 2007). Thus the development of laws and political institutions, as well as societal developments all played a role in the history of individual liberties and rights that have been granted to people. So the legal culture, which emphasizes fundamental political interactions, i.e., relationships between the authorities and their subjects, is where human rights are most prominently seen (Gawin M. et al, 2016). Thus it is clear that the concept of human rights has not been far from the religious, cultural and legal regulation throughout the ages.

It is well known that human rights are of great importance to all human beings and are due to them instinctively, as there is no way to live in dignity except by enabling human beings to enjoy them. For this reason, the United Nations issued the "Universal Declaration of Human Rights" in 1948, as well as the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic and Social and Cultural Rights" in 1966, collectively, these three treaties are known as the International Bill of Human Right.

Thus, human rights are privileges that we all have simply because we are human, and they are not awarded to us by any government. These universal rights are fundamental to human life, and they range from the most essential rights, such as the right to life, to rights that make life worthwhile, such as the right to work, health, education and freedom (The Office of the High Commissioner for Human, 2022).

Consequently, the meaning of human rights has three overlapping features: rights must be "universal" applicable everywhere, "equal" one for all, and "natural" inherent in the human being, therefore, for rights to be human rights they must be held equally by all human beings everywhere on the earth for no other reason than that they are human (Hunt, 2013). In addition, the United Nations affirmed that the Universal Declaration of Human Rights is: "a common standard of achievement for all peoples and nations" (Universal Declaration of Human Rights, 1948)

On the other hand, on the eve of the end of World War II, human rights moved to a new stage of their development, which is the international stage, a stage in which human rights issues have taken on an international character after it was a purely internal issue (Abdelrahman, 2012). Consequently, human rights protection assumed great significance at the global level. The broad shift in perspective on the interplay between state sovereignty and human rights was first significant change in international law. Consequently, human rights abuses could no longer be concealed by invoking state sovereignty because they could no longer be viewed as a domestic issue (Lattmann, T., Tóth, N., & Vizi, B., 2017).

Therefore, the Universal Declaration of Human Rights obligated states to encourage widespread respect for and enforcement of basic freedoms

and human rights. Also, Article 2 of the International Covenant on Civil and Political Rights obliges states to respect the rights that are set forth in it and to guarantee these rights to all persons within their territory and subject to their jurisdiction without discrimination. They shall also adopt the appropriate legislative and non-legislative steps to implement these rights and protect them against abuses committed by official individuals and entities in the state system, in line with its constitutional procedures and the terms of this covenant. Moreover, Article 2 of the International Covenant on Economic, Social and Cultural Rights obligates states undertakes to take the necessary legislative and other steps to ensure that the rights enshrined in this Covenant are gradually and effectively exercised. Accordingly, this study will deal with the concept of human rights, their legal basis and classifications, in addition to studying the possibility of unifying legal and cultural restrictions on the exercise of human rights at the global level.

B. Problem of the Study

When we look at the way international human rights organizations deal with human rights issues, we often find that they operate in the manner of Western thought, sometimes making them contradict the principles of the local cultures and laws of other countries. We also see that Western countries sometimes set conditions in accepting its concepts of human rights, to provide assistance to developing countries, which confirms the desire of the West to globalize its cultural view of the concept of human rights, such as cases related to women's rights and gay rights.

Accordingly, the problem of the study lies in the extent to which human rights concepts apply globally, by studying the extent of the success of the International Bill of Human Rights in providing conclusive meanings in

determining the standards for the exercise of human rights according to the different cultures and laws of countries, as well as analyzing the legal controls and restrictions that govern the exercise of human rights in the different societies. Therefore, it can provide a complete understanding for anyone who wants to learn about the concept of human rights according to different local cultures and laws. Therefore, the study seeks to answer the following questions:

1. Are the concepts of human rights uniform for all cultures around the world?
2. Does the International Bill of Human Rights include comprehensive and decisive restrictions on the exercise of human rights that are compatible with the cultures and laws of various countries?
3. Can the exercise of human rights be absolute without taking into account local cultures and laws?
4. What are the guarantees to protect human rights from misinterpretation of the controls for exercising them?

C. Objective of the study

The study aims to clarify the legal and cultural restrictions that can be applied to the exercise of civil, political, economic, social, cultural, and collective rights as well, by analyzing the concept of human rights and their international classifications, as well as stating and discussing the opinions of scholars and researchers from different countries and cultures about the possibility of unifying controls for the exercise of human rights globally.

D. Significance of the study

The research addresses an important legal problem related to the legal and cultural restrictions imposed by international legal documents and the extent of their compatibility with national cultures and laws and the extent to which controls and restrictions can be unified for the exercise of human rights globally.

E. Previous Studies

There are three previous studies related to topics similar to this study, which are as follows:

1. Good, C. (2010). Human Rights and Relativism. Macalester Journal of Philosophy, 19(1), 27-52. This study found that the concepts of human rights in international instruments are derived from Western thought, and that the exercise of human rights must be in accordance with the cultural determinants of different peoples.

2. Follesdal, A. (2005). Human Rights and Relativism. In F. a. Pogge, Studies in Global Justice (pp. 265-283). Oslo: University of Oslo.

3. Lakatos, I. (2018). Thoughts on universalism versus cultural relativism, with special attention to women's rights. Pécs Journal of International and European Law, 6, 6-25.

These two studies found that human rights are characterized by universality. Therefore, it is wrong to link the concept of human rights to the narrow borders of local cultures, as all human beings share the same values that value humans, thus there is no meaning to cultural restrictions on the exercise of human rights that detract from them.

Previous studies are relatively old and they dealt with the issue of the relationship of the concept of human rights to cultures in general. On the other hand, our study will address the issue of the relationship of the exercise of human rights to cultural and legal restrictions in detail and in depth, citing comparative examples and cases between cultures and societies. This study will also address the possibility of unifying cultural and legal restrictions at the global level in this regard, in addition to studying the International Bill of Human Rights and the role of Islam in the issue of human rights.

E. Methodology

This study relies on a descriptive, analytical and comparative method, and a statutory approach (Al-Fatih & Siboy, 2021). The descriptive-analytical method studies the concept of human rights and analyzes the cultural and legal restrictions that govern their exercise, in addition to studying the general texts of international human rights treaties in this regard, which clarifies the nature of the cultural and legal restrictions that govern the exercise of human rights. The comparative method compares the determinants of the exercise and concept of human rights from one society to another, thus highlighting the most important cultural and legal differences. The statutory approach studies the provisions and agreements related to the issues raised in this study. Through this approach, weaknesses and gaps in the International Bill of Human Rights can be identified.

2. Results of the Study

This study found several results as follows:

1. There is a team calling for the universality of human rights and not linking them to any religious or cultural restrictions, as human rights

are inherent in the human being as a human being, regardless of his affiliation or culture. On the other hand, there is another team that finds that the concept of human rights is linked to the conscience of a person who is governed by what he believes in terms of culture, thus following the standards of his culture in the way of exercising human rights.

2. All countries agree on the general concept of human rights and some common values, but they differ in the way some rights are exercised according to their national culture and laws.

3. Therefore, individuals' exercise of their rights is constrained by the cultural and controls and restrictions in the societies in which they live, as well as by the laws enacted by their countries to organize their lives and maintain public order and morals.

4. Consequently, it is not possible to identify a single list of restrictions the exercise of human rights at the global level as a result of differences in national cultures and laws.

5. The Islamic religion has recognized human rights, established moral foundations for them, and provided guarantees to protect them from violations. Thus, Islam is considered a complete and comprehensive legislation that Muslims follow in organizing their rights and how to exercise them.

6. The International Bill of Human Rights came in flexible and general terms that carry many meanings about controls and restrictions on the enjoyment of human rights, which are considered gaps in the International Bill of Human Rights.

7. Western countries exploited these gaps in the globalization of Western concepts of the way to exercise human rights, ignoring other cultures, by directing the work of international organizations concerned with human rights in the manner of Western thought, also interfering in the affairs of other countries by imposing sanctions or stopping aid under the pretext of human rights issues.

3. Discussion of the results

3. A. Definition of Human Rights

The phrase "human rights" was first used in the latter half of the eighteenth century. Prior to this, the phrase "individual rights" and "natural rights" were frequently used (Hunt, 2013), as the phrase "Human Rights" was first chosen by Frenchman Thomas Paine while translating the French Declaration of Rights of Man and the Citizen from French to English (Kamruzzaman, 2016). "Human" refers to everyone on earth without any discrimination based on age, race, nationality, philosophy, orientation, gender or religious opinions. And the term "rights" refer to Privileges and advantages that every individual deserves because of his human personality, regardless of race, nationality, age, philosophy, orientation, gender or religious opinions (Nweke, 15 July 2020).

Furthermore, human flourishing, dignity, obligations to family and community, natural rights, individual freedom, and social justice against exploitation based on sex, class, or caste, all of which are used to define the moral rationale for the meaning of human rights (Marks, 2016). Meaning of human rights has three overlapping features: rights must be "universal" applicable everywhere, "equal" one for all, "natural" inherent in the human being, and for rights to be human rights they must be held equally by all

human beings everywhere on the earth for no other reason than that they are human (Hunt, 2013).

With a deeper clarification of the concept of human rights, human rights are a set of standards that govern how individuals and groups are treated by states and non-state entities based on moral precepts pertaining to what society deems essential to a decent living. These standards are included in national and international legal frameworks, which define the steps to be taken to hold duty-bearers accountable and offer compensation to those who may have been the victims of human rights breaches (Marks, 2016). In other words, human rights are rights that we all enjoy simply because we are human, and they are not granted to us by any government, these universal rights are inherent to all human beings, whatever their nationality, gender, national or ethnic origin, colour, religion, language or any other status, they are diverse and range from the most fundamental right such as the right to life, to rights that make life worth living, such as the right to food, education, work, health and freedom (The Office of the High Commissioner for Human Rights, 2022).

In this regard, the New Lexicon Webster's Dictionary of the English language defines Human Rights as "The right to be free from Governmental violations of the integrity of the persons" (Kamruzzaman, 2016). While the Indonesian legislator defined human rights as "a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth" (Indonesian Law No. 39 of 1999).

According to the United Nations and the Inter-Parliamentary Union human rights are "rights that every human being has by virtue of his or her human dignity; human rights are rights inherent to all human beings. And human rights are the sum of individual and collective rights laid down in State constitutions and international law" (The Inter-Parliamentary Union and the United Nations, 2016).

In its preface, the 1981 Universal Islamic Declaration of Human Rights states: "Human rights in Islam are not a grant from a king or ruler or a decision issued by an authority or an international organization. Rather, they are rights that are binding by virtue of their divine source. No ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered."

Accordingly, the author finds that human rights can be defined as a set of norms that control how the state and other entities treat individuals and groups, as well as how individuals or groups treat each other within and outside the borders of the state based on what natural law considers fundamental to a decent life of rights and freedoms to which every human being is entitled as a human being without discrimination. In addition, human rights apply to all areas of human life, allowing all individuals to live their lives in freedom, equality, and dignity. Furthermore, human rights are rights in their entirety, integrated rights and linked to each other. If some of them are violated, this will directly affect the rest of the rights. For example, if the right to security or the right to freedom is violated, this will consequently violate the rights of safety, education, work, development and other rights, thus human rights are considered an indivisible group, as they are an integrated unit and related to each other. Therefore, there is no distinction between these rights under UDUR.

3. B. Classification of human rights

Human rights are considered an indivisible group, as they are an integrated unit. Thus there is no distinction between these rights under the Universal Declaration of Human Rights of 1948.

However, later in the context of East-West tensions during the Cold War, a differentiation was made. Due to this, two independent covenants were negotiated and adopted: one on economic, social, and cultural rights, and the other on civil and political rights (Office of the United Nations High Commissioner for Human Rights, 2022). In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were made available for signature. They became enforceable in 1976 (Australian Human Rights Commission , 2022). It was known that the west supported the liberal system and the east supported the socialist system

These three instruments (UDHR, ICCPR, and ICESCR) are now known as the International Bill of Human Rights. Consequently, the International Bill of Human Rights outlines basic human rights that must be universally protected and the basis of all international human rights conventions, it also provides the principles and pillars of current and future human rights conventions and treaties and other legal instruments. According to the International Bill of Human Rights human rights are divided into three groups as follows:

1. Civil and political rights: include: “The right to life, Freedom from torture and inhuman treatment, Freedom from slavery, servitude or forced labour, The right to liberty and security of the person, The right to humane treatment in detention, Freedom of movement and

residence, Prohibition of expulsion of aliens, Freedom of thought, conscience, and religious belief, Freedom of expression, The right to privacy, Non-imprisonment for debt, The right to a fair trial, The right to personhood under the law, Equality before the law, Freedom of assembly and association, The right to marry and found a family, The rights of children, The right to practice a religion, culture and language, Prohibition of war propaganda and hate speech constituting incitement and The right to hold office and vote in free elections" (International Covenant on Civil and Political Rights (ICCPR), 1966).

2. Economic, social and cultural rights: include: "The right to work, just and favorable conditions of work, Social the right to social security and insurance, The right to protection and assistance to the family, The right to an adequate standard of living and freedom from hunger, The right to the highest attainable standard of physical and mental health, The right to education, The right to culture and to benefit from scientific progress and Equality between women and men" (International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966).

3. Collective rights of peoples: include: "The right to self-determination and Permanent sovereignty over natural resources" (ICCPR & ICESCR, Article 1), "The rights of national, ethnic, religious and linguistic minorities" (ICCPR, Article 27), "The right to Healthy environment" (United Nations, 2021), "The right to Peace" (United Nations, 2017) and "The right to sustainable development" (United Nations, 2015).

3. C. The rationale and the legal basis for human rights

Human rights are a set of standards that govern how individuals and groups are treated by states and non-state entities based on moral precepts pertaining to what society deems essential to a decent living. These standards are included in national and international legal frameworks (Marks, 2016). In other words, human rights are rights that we all enjoy simply because we are human, and they are not granted to us by any government; these universal rights are inherent to all human beings (The Office of the High Commissioner for Human Rights, 2022). In this context, the International Bill of Human Rights outlines basic human rights that must be universally protected and the basis of all international human rights conventions, it also provides the principles and pillars of current and future human rights conventions and treaties and other legal instruments. Therefore, the author finds that the rationale for human rights lies in that they are inherent in human nature and what people believe in terms of religion and culture. Human rights also find their legal basis in national constitutions and the International Bill of Human Rights.

3. D. The Possibility of Unifying Cultural Restrictions

Some find that the human rights contained in the Universal Declaration of Human Rights, on the basis of which all other human rights treaties were adopted, are universal and with the same degree of universality that characterizes them. Consequently, the international definition of human rights transcends the boundaries of the local cultures and laws of peoples. But in return, some find that it is not possible to generalize the concepts of human rights globally, due to the different cultures and laws between nations, as the concepts of human rights are closely linked to cultural norms and Constraints.

Therefore, there are two opinions, one of which calls for the universality of rights, thus unifying the restrictions imposed on their exercise, and the other calls for the non-universality of rights, consequently, the impossibility of unifying the restrictions on their exercise according to the differences in cultures.

3. D. 1. The Universality of Rights

There is a voice appeared calling for the universality of rights and not restricting them to any cultural standards, this voice adds that there are many primitive and undeveloped cultures, and in the end, when they develop, they will adopt modern western concepts of human rights, as well as the universality of rights stems from their nature, which is far from cultural restrictions (Halstead, 2014). In addition, the universality of rights does not give authoritarian regimes justifications for restricting human rights.

In this regard, Andreas Follesdal (2005) found that human rights is not derived from the western view and does not conflict with other cultures, but rather, Human rights concepts are founded on a limited list of important interests shared by all peoples, and compatible with a wide range of ethical traditions. He added that human rights can be seen as measures to avoid the abuse of governments' tyrannical control over the freedoms of their populations, thus organizing the use of authority within sovereign nations. Condemning human rights abuses like genocide, arbitrary detention, torture, slavery-like methods and the punishment of people due to their religious convictions or nonviolent protests against unlawful government action is a position shared by many cultures and traditions.

Moreover, Istvan Lakatos (2018) found that culture in its rigid and extreme form is the sole source of rights significantly undermines the

universality of human rights and provides a basis for misuse of the concept in the interest of covering up human rights violations. Therefore, cultures must not be closed entities with rigid boundaries, but rather they must be capable of development or change as a result of interaction with external influences.

3. D. 2. Non-University of Rights

On the other hand, an opposite voice emerged calling for non-university of rights, because the concept of rights differs from society to society depending on its local culture (Halstead, 2014). In addition, the laws regulating people's lives in any society stem primarily from their culture.

Moreover, Colleen Good (2010) found that although human rights instruments attempt to respect local cultures around the world, the concern remains that the primary language of the texts, derived as it is from Western modes of thinking, imposes insensitive concepts under the pretext of universality. Word choice is crucial because it might imply more than is meant and (intentionally or unintentionally) exclude some persons and ideas from the discussion. Even the most fundamental ideas about what a human being is can give rise to disagreements, which should be further investigated to ensure that when we talk about human rights, we are all speaking of the same thing. He also found that the different cultures have different cultural and moral histories, and they should not be ignored, should be closely examined to allow for more intercultural dialogue on human rights topics. By studying these differences, we will be able to ensure greater agreement and reduce misunderstandings between cultures about their view of what human rights are.

In addition, Lynn Hunt (2013) found that the language of the Universal Declaration of Human Rights is derived from the Western view of the concept of human rights. She also added that when the United Nations adopted the Universal Declaration of Human Rights in 1948, its first article stipulated that: "All human beings are born free and equal in dignity and rights." Indeed, Article 1 of the French Declaration of the Rights of Man and of the Citizen of 1789 stated: "Men are born and live free and equal in rights." Although the linguistic modification was strange, it is not hidden from anyone that there is a clear repetition in the two documents.

Furthermore, when we look at the way international human rights organizations deal with human rights issues, we often find that they operate in the manner of Western thought, sometimes making them contradict the principles of the local cultures of other countries. We also see that Western countries set conditions in accepting its concepts of human rights, to provide assistance to developing countries, which confirms the desire of the West to globalize its cultural view of the concept of human rights, such as cases related to women's rights and gay rights.

3. D. 3. Evaluating the two Opinions

The author finds since the birth of man, his rights have been born with him as a part of that person's existence, but awareness and recognition of these rights, and then the enjoyment of them, took a long march in human history, this long march has made great achievements in favor of human rights thanks to the struggle of individuals and peoples throughout history against injustice and tyranny. In addition to heavenly religions and ancient civilizations, such as Hammurabi's law in the Babylonian civilization during the eighteenth century BC, contributed to laying the foundations of human rights in their current form.

Thus, the development of the notion of human rights was linked to the development of human societies in various areas of life, such as the development of the basics of state and international relations, as well as the development of the judiciary and laws. Consequently, there are three historical sources that are considered the main source and legal basis for human rights: the human instinct (natural law), customs and traditions, and the heavenly religions.

First, human beings are born with an instinct to love dignity, freedom and justice in his treatment; this is what we mean by human instinct or natural law. In other words, human instinct "natural law" is a body of unwritten, unalterable principles that must be followed by everyone in every society because they derive from nature itself. It is also a type of morality that must be adhered to in every place and time, such as the principles of justice and equality. These forms of rights are inherent in human nature and are not enacted by legislators.

Secondly, Customs and Traditions: they are passed down through generations that society considers valid and obligatory to follow. If people continue to engage in a certain behavior for a period of time, it becomes a person's right to engage in that habitual behavior, such as the right to compensation for a work injury or the right to participate in government affairs.

Thirdly, the heavenly religions also came with provisions and principles that honor the human being and stipulate his rights and freedoms, such as Christian legislation and Islamic legislation, especially Islamic legislation which recognizes human dignity. Allah SWT said in the Holy Qur'an: "And we have certainly honored the children of Adam and carried them on the

land and sea...” Verse (17:70). Moreover, Islam stipulates equality, justice, non-discrimination, and other human rights, as well as set rules to ensure that human rights are not diminished. So The entire population of different religions and ethnicities lived in equality and justice during the era of Islamic rule during the past centuries for its regions in Central and Western Asia, North Africa, and Southern and Eastern Europe. Islamic legislation also restricted the authority of rulers to ensure their good treatment of the subjects, ensure their security and provide them with the necessities of life.

Thus, Islam is considered by Muslims to be the most comprehensive legislation and the strongest charter for human rights. It guarantees all people and races to enjoy their legitimate rights and freedoms (Nadwi, 2021). In other words, during his calling, the Prophet Muhammad declared that all individuals are born equal, as he said in his last known public speech that “All humans are descended from Adam and Eve,” and “There is no superiority of an Arab over a non-Arab, or of a non-Arab over an Arab, and no superiority of a white person over a black person or of a black person over a white person, except on the basis of personal piety and righteousness” (Afsaruddin, 2020).

Also, according to the Holy Qur’an, verses 42:13, 21, and 45:18, Islamic shariah refers to a body of Islamic teachings on morality or a system of standards, laws, and values that guide human behavior. Shariah consequently encompasses all ideas and frameworks that support human existence and offers the tools, values, and guidelines required to build and sustain human well-being. It is centered on human needs and exists to ensure that people are happy in this life and the next (Qur’an, 2:30; 3:191; 6:165; 38:27; 44:38-39; 67:1-2) (Abdullah, 2015). In addition to Chapter 49, verse 13 of Islam’s sacred scripture, the Quran, declares: “O

humankind! We have made you into nations and tribes, so that you may get to know one another. The noblest of you in God's sight is the one who is most righteous." Thus, the Quran said personal piety and deeds were the basis for merit, not tribal affiliation.

The author also finds that since its inception in the early seventh century, Islam has confirmed through the Quranic verses and hadiths of the Holy Prophet all human rights that the world in general and the Western world, in particular, have adopted over the past centuries. It honored the human being, made his life sacred, prohibited aggression and unlawful killing, forbade the tyranny of rulers, made governance on the basis of consultation and taking into account the interests of the people, established freedom and equality, provided a decent life for people, and other rights that within the purposes of Sharia. Therefore, the supreme purpose of the shariah is to guide the human being to preserve five fundamental elements in human life that are: ad-din (religion), an-nafs (life), al-'aql (intellect), an-nasl (ancestry) and al-mal (property or wealth).

In this regard, the relationship between human rights and Islam is fundamental in countries of the Arab world, where religion plays an important role in shaping Arab culture (Mohammed Almahfali & Helen Avery, 2023). Therefore, it is not rational to say that the standards for exercising human rights are not related to the cultures of people that are shaped according to what a person believes in religion or belief.

On the other hand, it is known that most of the international agreements related to human rights were drafted in the twentieth century. Thus human rights have their roots in culture, which includes the set of customs, traditions, societal values and religious teachings in a society. Consequently, it cannot be said with certainty that human rights are not linked to culture.

On the other hand, Jawana H. (2021) found that Indonesia has large and diverse cultural groups covering large areas, so the exercise of human rights is also diverse, which is why it is difficult to establish a unified exercise of human rights in Indonesia. Also found that law enforcement institutions often rely on what is contained in written legislation, and sometimes the enactment of such legislation not to address social issues faced by society but rather for the sake of political discourse, which is recognized by the international community, or to meet the demands imposed on Indonesia from the international community. Thus there are some new legislations that have introduced new concepts that require a sudden change in society's values, which creates a conflict between the law and some cultural concepts in the exercise of human rights.

Therefore, if a society's culture is ignored and new standards of human rights concepts are imposed on it, sectarian conflicts and cultural differences may arise. In this regard, when we make a comparison between Indonesia and Palestine in how they exercise some rights, we find that there are many cultures in Indonesia, consequently, the way of exercising human rights is different from one culture to another and what enhances different cultures is the presence of different languages in Indonesia, according to what is known, there are approximately 700 local living languages in Indonesia, for example, Citizens who live in the city of Bali differ in their customs and lifestyle from citizens who live in Makassar. Therefore, cultures can vary within a single country due to different ethnicities.. As for Palestine, in it, culture is one and the language is one, therefore, the way of exercising human rights is united.

Among the prominent issues that are affected by the different cultures between Indonesia and Palestine is the issue of women's rights, as in

Indonesia, women enjoy more freedom than women in Palestine in the fields of work and personal freedom, for example, in Indonesia, women can work in most professions, but in Palestine, women often work in the fields of health, education and public services. Likewise, the woman in Indonesia has the freedom to leave the house at night without a mahram (alone), this is not permitted in Palestine, as well as there are many Indonesian families that do not mind friendship between the young man and the girl before marriage, this is not permitted in Palestine. Thus, we find how culture has a significant effect on the way of exercising human rights.

Consequently, it is stable for each country to enact its laws based on its own cultural norms. In other words, when the state legislates laws and defines public morals, it takes into account its cultural and social conditions. Thus it is clear that the laws regulating life differ from one state to another. For example, we find in the West the rights of so-called homosexuality and trans-sexuality are recognized by law, but this is not allowed in the East. Rather, it is considered a crime in Islamic countries because of its association with morals and common sense. In addition, sexual relations outside marriage are also criminalized in most Arab and Islamic countries, while we find them not criminalized in other countries. Rather, they are considered freedoms in Western countries, so when we talk about women's rights, for instance, the concept of rights in this regard differs from one culture to another.

In this context, in accordance with paragraph 2 (b) of General Assembly resolution 48/141, when the United Nations High Commissioner is appointed, he must have sufficient awareness of human rights and a general awareness of the different cultures of the peoples of the world. Consequently, the United Nations recognized the differences in ways of exercising human rights in different cultures.

However, the author finds that The International Bill of Human Rights came in flexible and general terms that carry many meanings about controls and restrictions on the enjoyment of human rights, which are considered gaps in the International Bill of Human Rights. In addition, Article 27 of the International Covenant on Civil and Political Rights recognizes respect for minority cultures, but it is limited to recognizing minority cultures. This does not reflect the culture of societies as a whole. Therefore, the article does not fully address the issue of culture, which makes the matter contain connotations that may be misinterpreted.

Consequently, it is a mistake to unify the concepts of human rights and the way they are exercised by all people. It is self-evident that people differ from each other in their traditions and cultures, which are linked to what the individual believes in his beliefs. Illustrative example: if we talk about dignity, its concept differs from one person to another. For example, a woman's practice of sex for money outside marriage is considered a freedom and does not diminish her dignity unless her husband objects if she is married in some societies. On the contrary, this is considered to diminish her dignity and make her a pariah in other societies. Likewise, polygamy is considered a right and permissible in some societies, while in others it is considered a degradation of a woman's dignity.

Another example, the right to life is defined differently from one society to another. When some societies define the right to life, they prohibit the death penalty because they see it as inconsistent with the right to life. On the other hand, other societies consider that the death penalty is linked to the right to life, especially since these societies are dominated by familial and tribal character, in which the killer is only forgiven by killing him. Moreover, the laws of some countries adopt what is called euthanasia, while

other laws criminalize it as it conflicts with the right to life. In addition, the concept of justice varies across cultures. In some cultures, the concept of justice is more comprehensive than the concept of equality. Hence, there are rights that differ in the degree of enjoyment depending on the person's condition.

In this context, Lamia Al-Zarooni (2019) finds that the United Arab Emirates has not ratified the International Covenant on Civil and Political Rights nor the International Covenant on Economic, Social and Cultural Rights because the interpretation of some of their articles conflicts with the provisions of Islamic Sharia and Emirati culture stemming from Islamic Sharia, such as Article 3 of the two International Covenants, which gives absolute equality between the two genders, and Article 18 of the International Covenant on Civil and Political Rights relating to the freedom to adopt or change any religion or belief.

On other hand, speech that is offensive to religions and beliefs constitutes racial discrimination, incites hatred, fuels conflicts and rivalries between societies (Abdullah Al-Mualla & Wael Allam, 2023), and is considered an insult to some cultures. An example of this is what some European governments have recently done by allowing some people to burn the Holy Qur'an and insult the Prophet Muhammad under the pretext of freedom of expression, or prohibiting the wearing of the hijab under the pretext of state secularism, which constitutes a grave violation of Article 27 of the International Covenant on Civil and Political Rights. Accordingly, there was a strong response at the political, societal and legal levels from Islamic societies. Therefore, it cannot be said that the concept of exercising human rights can be separated from the cultures of people.

Consequently, the universal values of human rights are theoretically acceptable to all countries, but at the level of implementation, there are always differences between one country and another, due to different cultures. In this regard, Indonesia accepts the universal values of the Declaration of Human Rights; but is implemented as far as possible in accordance with the cultures and laws of Indonesia (Punia, 2020).

Thus, our vision differs from the concept of rights and freedoms according to different traditions and cultures. Moreover, human rights concepts express specificities whose violation may lead to fueling internal or external conflicts. This may appear clearly in the separatist struggles of some groups when they feel that the ruling regime wants to diminish their rights or it wants to impose its own concepts, such as rejecting behavior that the group considers a right according to its own culture. Likewise, we see in the colonial era, many revolutions occurred due to the colonial state imposing its own concepts on the people under colonialism, which contradicted their cultures and beliefs, such as restricting the right to perform religious rites or banning some of them.

Despite this, human beings by nature share some values with others of their gender, regardless of their cultures or religions, we all share in condemning and rejecting human rights violations represented in extrajudicial killings, enforced disappearances, illegal detention, inhumane treatment, and similar violations that we all agree to reject because they violate human values. Accordingly, we humans from all nations agree on the general concept of human rights contained in the International Bill of Human Rights, but we differ in the details of some aspects of it, as we have stated previously. Consequently, all cultures agree on human rights in their general sense; but differ in their details and the way they are exercised.

After all, every culture has its own standards to allow its followers in the way of enjoying human rights.

3. E. The Possibility of Unifying Legal Restrictions

In the Renaissance era in Europe, there was a revolution against authoritarian rule and church rule. One of the most important results of this revolution was the adoption of the democratic method in assigning and transferring power, recognizing the rights and freedoms of individuals, and issuing human rights declarations and adopting them in constitutions, especially after the French Revolution of 1789 (Khaled, 2012). The Enlightenment also played a significant influence in the process that led to the creation of modern constitutions, with the recognition of human rights as a consequence of human dignity on an equal footing (Lattmann, T., Tóth, N., & Vizi, B., 2017). Thus human rights became included in constitutions and laws that restrict the authority of the ruler and the state in the way they deal with subjects. But does the matter absolutely restrict the state's hand in organizing state affairs and maintaining public order?

Human rights actually define people's interactions with political entities, particularly the State. Thus human rights constrain state authority but also require states to take practical measures to realize an atmosphere in which everyone can use their rights (United Nation, 2016). In this context, it is true that "national sovereignty" has limitations; it is also true that "human rights" have limitations. A State's sovereignty is unquestionably constrained by its obligations under international law to respect and uphold human rights. If these obligations are broken, the State will be held accountable not only by the victims but also by the international community. However, the current positive lex lata does not allow a state or group of states to utilize human rights as a weapon to disregard another State's national sovereignty

and meddle in its internal affairs (Shen, 2017). In other words, Human rights are a collection of norms that govern how governments and non-state entities treat people based on moral concepts related to what society considers necessary for living a dignified life. These norms are integrated into national and international legal frameworks. (Marks, 2016).

On the other hand, everyone has duties to society, in the sense that the exercise of rights and freedoms must not contradict the provisions of the law, as well as must not affect the rights and freedoms of others, and must not violate morals and public order (Art. 29 of UDHR, 1948). In fact, obligations to family and society, inalienable rights, individual liberty and social equality against exploitation based on gender, class, or caste are all used to explain the moral rationale for the meaning of exercising human rights (Marks, 2016).

Consequently, human rights are relevant in two primary ways: as legally enforceable rights and as entitlements based on particular principles or values (Nweke, 15 July 2020). On the other hand, most states and domestic legal systems have provided some forms of human rights protection since the nineteenth century. Of course, the pace of this development, the nature of human rights recognized, and the strength of this protection differed in different countries, according to the stage of development of society and the economy and many other factors that may determine this (Lattmann, T., Tóth, N., & Vizi, B., 2017).

In fact, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights obligated states to promote human rights and work to protect them. On the other hand, these international

instruments allow states to restrict the exercise of human rights based on certain conditions. For example, Article 4 of the International Covenant on Civil and Political Rights allows states to take measures restricting the exercise of civil and political rights, but these restrictions must be in cases of exceptional emergencies that threaten the security of the state and are officially declared, and these measures must be taken within the narrowest limits required by the situation. Moreover, these measures must not conflict with other international law responsibilities and must not involve discrimination. This provision also does not allow derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the International Covenant.

In addition, pursuant to Article 12 of the ICCPR: "The right to move and reside legally within the country and to leave the country"; Article 18: "The freedom of a person to manifest his religion or belief"; Article 19: "The right to freedom of expression"; Article 21: "The exercise of the right to peaceful assembly"; and Article 22: "The exercise of the right to freedom of association and trade union", these rights may be restricted if necessary measures are taken in accordance with the law in a democratic society for the purpose of maintaining national security, public order, public safety, public health or morals or protecting the rights and freedoms of others.

Moreover, Article 4 of the ICESCR obligates states not to restrict the enjoyment of economic, social and cultural rights except to the limits established by law, to the extent that this is consistent with the nature of these rights, and provided that their sole objective is to promote the general welfare in a democratic society.

However, these restrictions and controls have a flexible meaning that can be interpreted according to the orientations of the ruling regime in the

country, for example, what is the concept of public order or national security and what are the controls for freedom of the press, freedom of expression or freedom of peaceful assembly in order to maintain public order. In addition, what is the concept of a democratic society? Most countries today are proud of their democracy, and every society interprets democracy according to its political, economic and social situation, as well as determinants of national security, public health, public order or public safety that differ from society to society and from regime to regime. Therefore, it is difficult to unify legal restrictions on the exercise of human rights throughout the world.

In this regard, the author finds that the decisive factor in this regard is the independence of the authorities and respect for the integrity and impartiality of the judiciary and respect for the application of its rulings, as the judiciary is the mainstay of protecting human rights from violations, as it is the fortress of victims in implementing their rights and the deterrent hand in punishing criminals, as well as respecting the accountability of the executive authority before the legislative authority.

4. Conclusions and Recommendations

A. Conclusions of the Study

1. Individuals' exercise of their rights is not absolute, but rather restricted by cultural and legal restrictions, which are summarized in the fact that individuals have duties towards society.

2. The prevailing culture determines the method and controls for enjoying rights and freedoms. Thus all nations agree on the general concept of human rights but differ in the way some rights are exercised according to their cultures.

3. Therefore, it is not possible to identify a single list of restrictions imposed on the exercise of human rights at the global level as a result of differences in national cultures and laws.

4. The Islamic religion has recognized human rights, established moral foundations for them, and provided guarantees to protect them from violations. Thus, Islam is considered a complete and comprehensive legislation that Muslims follow in organizing their rights and how to exercise them.

5. The International Bill of Human Rights came in flexible and general terms that carry many meanings about controls and restrictions on the enjoyment of human rights. Therefore, the International Bill did not address the issue of differences in cultures and laws in this regard, which are considered gaps in the International Bill of Human Rights.

6. Western countries exploited these gaps in the globalization of Western concepts of the way to exercise human rights, ignoring other cultures, by directing the work of international organizations concerned with human rights in the manner of Western thought, also interfering in the affairs of other countries by imposing sanctions or stopping aid under the pretext of human rights issues.

7. The difference between people is considered normal. Therefore, the difference in visions about the restrictions on the exercise of human rights is considered a natural matter, because if we do not believe in the difference, then this is a reason to stir up disputes.

8. The decisive factor in protecting human rights from arbitrary restriction is the independence of the authorities, respect for the integrity and impartiality of the judiciary, and respect for the application of its rulings.

B. Recommendations of the Study

1. Establishing an appendix to the International Bill of Human Rights or a new international treaty that addresses the gaps and removes ambiguity about the controls and restrictions on exercising human rights that exist in the current International Bill; And taking into account cultural and legal differences around the world in this regard.

2. Calling for the establishment of an international forum under the auspices of the United Nations to promote constructive discussions and dialogues between representatives of countries around the world to crystallize convergent visions on cultural differences in this regard.

3. Implementing awareness programs by the United Nations and the concerned entities about the nature of the difference between the controls for the enjoyment of human rights. Consequently, respect for other cultures.

4. Supporting the independence and impartiality of the national judiciary, because it is the basic guarantee in protecting the exercise of human rights from arbitrary restriction.

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إمكانية توحيد القيود القانونية والثقافية على ممارسة حقوق الإنسان على المستوى العالمي

عبدالرحمن محمد الأسطل[1]

عبدالماسبا مجاسينج[2]

مسكون مسكون[3]

إن كاريتا سخارينا[4]

ملخص البحث:

تهدف هذه الدراسة إلى بيان إمكانية توحيد القيود الثقافية والقانونية على ممارسة حقوق الإنسان على المستوى العالمي من خلال تحليل مفهوم حقوق الإنسان ودراسة الضوابط والقيود الثقافية والقانونية التي تحكم ممارستها وَفْقًا لمختلف الثقافات والقوانين الوطنية، بالإضافة إلى تحليل نصوص الشرعة الدولية لحقوق الإنسان في هذا الشأن. المنهجية هي طريقة تحليلية مقارنة. قد أظهرت النتائج أن جميع الدول تتفق على المفهوم العام لحقوق الإنسان، ولكنها تختلف في طريقة ممارستها حسب ثقافة وقوانين كل منها. ولذلك، لا يمكن توحيد القيود الثقافية والقانونية المفروضة على ممارسة حقوق الإنسان في جميع أنحاء العالم. إضافة إلى ذلك فقد جاءت الشرعة الدولية لحقوق الإنسان بعبارات مرنة وعامة تحمل معاني عديدة حول الضوابط والقيود التي تحكم التمتع بحقوق الإنسان؛ ومن ثَمَّ فإن الشرعية الدولية لم تتناول بشكل قاطع مسألة اختلاف الثقافات والقوانين بين المجتمعات في هذا الصدد، وهو ما يعتبر ثغرة جعلت الدول الغربية تعمل على عولمة ثقافتها في تعريف القيود على حقوق الإنسان. وأخيراً توصي الدراسة بإنشاء معاهدة دولية جديدة تعالج الثغرات، وتزيل الالتباس حول القيود المفروضة على ممارسة حقوق الإنسان الواردة في الشرعة الدولية الحالية، والتي تأخذ في الاعتبار الاختلافات الثقافية والقانونية حول العالم

الكلمات الدالة: حقوق الإنسان، الثقافة، القانون، الضوابط، القيود.

(1) كلية القانون - جامعة حسن الدين (ماكاسر – إندونيسيا)
abdelrahman.alasttal@gmail.com

(2) كلية القانون - جامعة حسن الدين (ماكاسر – إندونيسيا)

(3) كلية القانون - جامعة حسن الدين (ماكاسر – إندونيسيا)

(4) كلية القانون - جامعة حسن الدين (ماكاسر – إندونيسيا)