

Human Rights Protection in Trade: A Challenge

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Abstract

In a global economy, trade is a key element of states' economic development. People performs various forms of trade since the beginning of time to the modern day. The debate over the protection of human rights has been excluded in the interests of trade since the occurrence of trade liberalization, despite codification of regulations through international institutions. The purposes of this paper are to analyze whether there are mechanisms for the protection of human rights and trade and to be an effort linking the human rights protection and trade. It is concluded that the protection of human rights in trade has not yet become something elaborated specifically in economic policies. First, in international cooperation, organizations such as WTO and international CSOs can do the propaganda of human rights and trade. Secondly, the government takes public choices and needs to shape the practices of human rights and trade. The WTO looks hesitant in performing its role; it especially moves around trade only. However, the insistence of mutual needs is voiced through the Millennium Development Goals (MDGs) program, Sustainable Development Goals (SDGs), as well as various other protections such as ICESCR, IUU, etc. The establishment of UN Guiding Principles of Principles on Business and Human Rights (UNGPs) in 2011 becomes the latest momentum for the framework to improve standards and practices of business and human rights.

Keywords: economy, human rights, trade.

Perlindungan Hak Asasi Manusia dalam Perdagangan: Sebuah Tantangan

Abstrak

Dalam ekonomi global perdagangan merupakan kunci utama dalam peningkatan ekonomi negara-negara. Berbagai bentuk perdagangan telah dilaksanakan sejak dahulu hingga sampai kepada bentuk modern saat ini. Perdebatan atas perlindungan hak asasi manusia yang tersingkirkan demi kepentingan perdagangan telah dimulai sejak terjadinya liberalisasi perdagangan sekalipun telah dilakukan kodifikasi peraturan melalui lembaga internasional. Kasus-kasus yang menimpa mengantarkan pada tujuan dari tulisan ini yang ingin menganalisa isu atas: apakah terdapat mekanisme perlindungan terhadap hak asasi manusia dan perdagangan? serta bagaimanakah upaya yang dilakukan untuk dapat menautkan antara perlindungan hak asasi manusia dan perdagangan. Dari penulisan ini disimpulkan bahwa

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perlindungan atas hak asasi manusia yang berkaitan dengan perdagangan belum menjadi sesuatu yang dibahas khusus di dalam kebijakan ekonomi. Pertama, dibutuhkan kerjasama internasional, organisasi seperti WTO dan CSO internasional dapat mempropagandakan agenda perlindungan hak asasi manusia di dalam perdagangan. Peran dari WTO dirasakan “agak ragu” terlebih dengan melihat landasan bergeraknya yang fokus pada perdagangan semata. Namun, desakan atas nama kebutuhan bersama di suarakan melalui program Millennium Development Goals (MDGs)-Sustainable Development Goals (SDGs) dan juga berbagai proteksi lainnya seperti ICESCR, IUU dan lainnya. Setelah UN Guiding Principle on Business and Human Rights (UNGPs) lahir di tahun 2011 menjadi momentum terbaru dalam kaitannya kerangka kerja untuk meningkatkan standar dan praktik terkait bisnis dan hak asasi manusia.

Kata kunci: ekonomi, hak asasi manusia, perdagangan.

A. Introduction

States always seek and optimize sources of revenue for the welfare of its people. To be wealthy, a state also always connects other states. The connection that always exists is economic relations. Economic relation among states is important. Economic relation can be created through existing forms of trade. One of the forms of economic relation is trade. Trade can evolve from bilateral level into regional and even multilateral level. Along with the rapid growth of international trade that adds incomes and benefits economically, the increase of a state economy also has adverse impacts. The impacts are never being counted from the perspective of initial goals. Allegedly, international trade does not only lead to better economic opportunities, but also causes negative impacts on states' development and people.

One of problems arisen from international trade that there have been various issues of human rights violations. There are various types of violations, such as Rights of Food and Trade, Health and Trade,¹ Participation and Information, Labor and Trade, Liberty and Security of Person, Effective Remedy, and Environment. Furthermore, T. N. Srinivasan adds that there are distressing conditions related to the human rights protection as follows.

...citizens of one country may have about what they deem “poor” conditions of work or “exploitation” of children by parents or employers.²

The Organization for Cooperation and Economic Development (OECD) also states the following explanation.³

“considers human rights as universal, transcending all political, economic, social and cultural situations. They are characterised as such because they involve the fundamental liberty, dignity and respect of the individual. Moreover, freedom of

¹ The Canadian Council for International Co-operation (CCIC), “Reconciling Trade and Human Rights the New Development Agenda”, *Conference Report on Canadian Council for International Co-operation*, May 28-29, 2007, p. 14.

² T. N. Srinivasan, “Trade And Human Rights”, *Center Discussion Paper No. 765.*, Economic Growth Center-Yale University, December 1996, p. 1.

³ T. N. Srinivasan, *Op.cit.*, p. 10.

association, prohibition of forced labour, elimination of child labour exploitation and the principle of non-discrimination are well established elements of the human rights international jurisprudence; in fact these workers' Rights are an inseparable part of human rights" (OECD (1996), p. 7).

The OECD underline statement, on emphasizing the need of human rights on conducting the protection already exists in the layers of politic, economic, social, and cultural aspects. The relation between human rights and trade and economic enforces into the anti-slavery, worker regulations. These, still not yet solve the complex implications on economic status in protecting the human rights, more needful issue on that specific area that must be arrange.

The link between trade and human rights also arise in the issue of environment since World Trade Organization (WTO) have performed the examination and analysis on the trade and environment area. This organization conclude that the increase of economic activities inflicts the environment condition. There is intermediate encounter between the economic and environment gap.⁴

... the link between trade opening and climate change. The "scale" effect refers to the impact on greenhouse gas emissions from the increased output or economic activity resulting from freer trade. The general presumption is that trade opening will increase economic activity and hence energy use. Everything else being equal, this increase in the scale of economic activity and energy use will lead to higher levels of greenhouse gas emissions.

Another fact comes from Mali on export crop. Reed states,⁵

"Has substantially increased the cultivated area and markedly reduced the fallow period. . . the profitability of cotton led farmers to increase greatly the area cultivated, extending onto marginal land. There is evidence of farmers' occupying and working land in excess of their real needs in order to forestall its use by others. Almost no fallowing is practiced in the region. The environmental effects are evident in land degradation and soil erosion owing to over cultivation, insufficient fallow, and the use of marginal land against a backdrop of increasing aridity.

Furthermore, Jonathan M. Harris mentions that health and safety issues arising in trade are not always easily resolved at either the domestic or the international levels. Domestic regulations that prohibit the sale of, for example, a toxic pesticide, do not apply internationally. "Goods that are restricted in domestic markets, on the grounds that they present a danger to human, animal or plant life or health, or to the environment, may often be legally exported. This may cause a problem

⁴ World Trade Organization (WTO), "The Impact of Trade Opening On Climate Change", https://www.wto.org/english/tratop_e/envir_e/climate_impact_e.htm, accessed on May 2018.

⁵ David Reed (ed.), "Structural Adjustment, the Environment, and Sustainable Development" in Jonathan M. Harris, "Trade and the Environment", *Global Development and Environment Institute*, Tufts University, 2004, p. 6.

for the importing country, where information is lack on whether or not, and why, the product is banned. Exporters may make false declarations. Customs authorities (particularly in developing countries) may lack adequate product testing facilities.”

With the above phenomena relating to trade and the environment, it is necessary to consider the arrangements of the existing international trade institutions. The question then arises whether the trade body, the WTO / GATT, owns or does not provide a backdrop to the existing trade economic activity. The instrument of trade regulation on WTO/GATT, in fact, had regulated the restriction on free trade.

According to GATT Article XX, countries are allowed to restrict trade in order to “conserve exhaustible natural resources” or to protect “human, animal or plant life or health.” However, the interpretation of this special exception to free trade rules has led to fiercely contested disputes among countries.⁶

B. International Trade

Based on the theory of trade, WTO/GATT have sum up that trade contrive vantage. There are three benefits of trade. First, there are gains from trade. Second, when a state sells goods or services to another state, this exchange is always beneficial. Third, two trading states have benefit from trade –even if one of them is more efficient than the other one at production.⁷ Trade is a form of movement from the international community that encourages growth in the country by conducting economic activities both within and outside the country of each capital holder.

The forms of international trade can be in the form of indirect and direct trade.⁸

International indirect investment is also called foreign indirect investment. It refers to economic activities in which investors increase the value of invested capital through purchase of foreign stocks or other securities or through provision of loans. To be more specific, the investors do not get involved nor have any effective say in the operation and management of the invested enterprises but only invest with particular stocks and securities that can provide income.

Foreign direct investment (FDI) as foreign ownership of productive activities and thus is another way in which foreign economic influence can affect a country. The FDI form is often used by the owner of capital and can be operate through Transnational Cooperation (TNC).

⁶ European nations have refused to allow imports of U.S. beef produced with hormone supplements. The U.S. has argued that since there is no *proven* harm to human health from the use of hormones, this is an illegal barrier to trade. The Europeans, however, cite the precautionary principle: since they fear the possible effects of hormones.

⁷ WTO E-Learning, “The WTO and Trade Economics: Theory and Policy”, https://ecampus.wto.org/admin/files/Course_492/CourseContents/TEC-E-Print.pdf, accessed on June 2018.

⁸ Huan Qi, “The Definition of Investment and its Development: for the Reference of the Future BIT between China and Canada”, *Revue Juridique Themis*, Vol. 45, 2011, p. 547.

The direct investment definition from World Trade Organization (WTO) is as follows.⁹

The Secretariat of the WTO published a report on trade and foreign direct investment in 1996. According to it, foreign direct investment is a situation in which an investor, which is residing in his parent country, owns assets in another country, the host country, and aims to manage these assets. The difference in management can distinguish foreign direct investment from portfolio investment which mainly focuses on foreign stocks, bonds and other financial instruments.

Huan Qi explains,

“Developing countries, emerging economies and countries in transition have come increasingly to see FDI as a source of economic development and modernization, income growth and employment. Countries have liberalised their FDI regimes and pursued other policies to attract investment. They have addressed the issue of how best to pursue domestic policies to maximise the benefits of foreign presence in the domestic economy. The study Foreign Direct Investment for Development attempts primarily to shed light on the second issue, by focusing on the overall effect of FDI on macro-economic growth and other welfare-enhancing processes, and on the channels through which these benefits take effect.”¹⁰

OECD report mentions that the FDI not only bring economic development in, vice versa, bring issue of negative in doing their business and trade.¹¹ As well as the other practice, that harming the human rights and economic condition on country of TNC takes place.

The potentially negative effects include the possibility of MNCs deliberately raising concentration levels, forcing competitors out of business by predatory pricing, taking away skilled labour and R&D staff from local firms, or engaging in restrictive business practices which, among other things, may deter technological development.¹²

⁹ Ibid.

¹⁰ The report listed three main types of foreign direct investment: a) equity capital; b) reinvested earnings; c) other capital (i.e., short or long-term borrowing and lending of funds between the MNC and the affiliate).

¹¹ OECD mentioned the issue from FDI:

Potential drawbacks include a deterioration of the balance of payments as profits are repatriated (albeit often offset by incoming FDI), a lack of positive linkages with local communities, the potentially harmful environmental impact of FDI, especially in the extractive and heavy industries, social disruptions of accelerated commercialization in less developed countries, and the effects on competition in national markets. Moreover, some host country authorities perceive an increasing dependence on internationally operating enterprises as representing a loss of political sovereignty. Even some expected benefits may prove elusive if, for example, the host economy, in its current state of economic development, is not able to take advantage of the technologies or know-how transferred through FDI. See, OECD, “Foreign Direct Investment for Development Maximising Benefits, Minimising Costs”, *OECD Publications Service*, 2002, p. 6.

¹² Jonathan Michie, “The Impact of Foreign Direct Investment on Human Capital Enhancement in Developing Countries”, *Report for the OECD*, 1st draft, 2001, p. 3.

Not just actors of TNC who do damage and or create damaging conditions on the environment as well as violations of human rights, the owners of capital originating in the country also do the same thing. Some of the indications are as follows.¹³

...Cases of violations of human rights are diverse and dependent on a company's activities. These include blatant violations, such as a mining company polluting the local drinking water or a garment company using forced labor. There are also more complex breaches of human rights, such as a telecom company, at the behest of a government agency, infringing a person's Rights to privacy...

C. Historical Development of Trade

The historical development of the forms of international trade can be seen from several forms and models of existing trade. The first phase is the era of the Roman Empire and the Middle Ages in this period that is used is the exchange of agricultural products and more emphasis on the strength of existing natural resources.¹⁴ After slavery is abolished then the economy activities were running¹⁵ but in Roman times there is no patterned economic formulation and tends to lead to time-based needs only.¹⁶

*...Roman intellectuals produced no alternative economic theories. Roman law was created and developed by the necessities of the times; it maintained the Rights to own land without limit and guaranteed freedom of contract...*¹⁷

The next is the era of Mercantilism, at the time there were some structural patterns compared to the previous Roman era.

Mercantilism was the first systematic body of economic thought that relied upon the power of the central authority (the Crown), national interest, self- sufficiency, exports (in particular, finished goods), the desire to accumulate treasure (in particular, bullion), opposition to usury and last, but not least, extensive regulatory and protectionist measures implemented by the Crown. Exports were stimulated by

¹³ Standard Life Investments, "Human Rights Implications for Companies and their Investors", https://www.standardlifeinvestments.com/WP_Human_Rights.pdf, accessed on June 2018.

¹⁴ Erhun Kula, *History of Environmental Economic Thought*, London: Routledge, 1998, p. 2.

¹⁵ In this period it is also noted that the use and dredging of natural resources has occurred.

¹⁶ Despite the abundance of natural resources, the Roman Empire failed to establish a viable economic structure. Its dependence on slave labour neither allowed efficient production, nor established loyalty to a state which tried to survive by way of militarism, oppression and harsh punishment of dissidents. Unlike the Greeks, the Romans did not produce great philosophers and thinkers, although Pliny the Elder, one of the few Roman thinkers, expressed concern about the use of slave labour, which he considered was inefficient. In large land holdings, supervision of slave labour was costly. Furthermore, slaves had no incentive to become productive or use natural resources wisely. Even tenant farmers did not strive to increase production, since they knew that whatever they achieved would be taken, one way or another, by the state, which was chronically short of money. Trade and expansion of the urban industries could not be carried out with the existing economic structures; they was also hampered by a shortage of manpower, see Erhun Kula, *Ibid.*, p. 3.

¹⁷ *Ibid.*, p. 6.

*the acquisition of colonies, agriculture was encouraged by import restrictions as well as the taxation of food coming from outside, industry—including the supply of military hardware—was protected by various measures, wages were kept down and money supply was increased to keep economic activity buoyant.*¹⁸

In addition, the effect on the increasing amount of population affects the use of existing resources.

The Era of physiocrats is the next era of economy and commerce. The thinkers of this era criticized and disagreed with the doctrine of the mercantilist school and held that it was not the trade or volume of precious metals, which created the wealth of nations but its land.¹⁹

On seventeenth and first part of the eighteenth centuries is an age in which thinkers and economists direct their point of view to more liberal contexts. This group argued vigorously against the restrictions on international trade, monopolies, and state regulations on industry.²⁰ This era is known as the era of the liberals. In addition, talks on regional trade also began to be discussed in this era.²¹

This era is considered a milestone era over trade is the era of Adam Smith. In this era in his writings *In the Wealth of Nations*, Smith argued, amongst other things, that the pursuit of self-interest, together with rationalization of labor and a steady expansion of the market place are the keys to economic growth and improvement in human well-being. He contends that the expansion and improvement in the agricultural sector would lead the way to greater prosperity²²

D. Multilateral Trade vs. Regional Trade

One of the international organizations that play a significant role in the interaction of the world community, especially in relation to the international trade, is WTO. WTO main function is as an organization for liberalizing trade. Trade liberalization is the main approach that the WTO has adopted to help member countries achieve economic growth and raise living standards. As its main task in carrying out the international trade chain, the WTO helps to create rules and regulations based on analysis and prediction on trade, which covers trade growth and its impact. The WTO then created a series of international trade rules, which are applicable among WTO Members. Moreover, the WTO also as a place for settling trade disputes between their member countries.

The WTO in 2009 mentioned that there are 25 new regional trade agreements (RTAs). The agreement includes developed and developing countries, and involves countries from most parts of the world. Participants, they are not always in one region, more members from different continents.²³

¹⁸ *Ibid.*, p. 9.

¹⁹ *Ibid.*, p. 11.

²⁰ *Ibid.*, p. 13.

²¹ *Ibid.*, p. 13.

²² *Ibid.*, p. 14.

²³ Caroline Freund and Emanuel Ornelas, "Regional Trade Agreements: Blessing or Burden?", *Centre Piece*, 2010, p. 7.

This new agreement brings the total number of applicable RTAs to nearly 300.²⁴

*The process of globalization is often associated with the 'unbundling' of the previous relationship between sovereignty, territoriality, and state power and, as a consequence, with steadily weakening nation-states.*²⁵

Free trade is a system in which the trade of goods and services between or within countries flows unhindered by government-imposed restrictions and interventions. Trend over free trade that usually starts in a certain region has been plagued and followed by all countries. Some examples of regional integration of international trade are:

European Union (EU), ASEAN Economic Community (AEC), Asia-Pacific Trade Agreement (APTA), North American Free Trade Agreement (NAFTA), and The African Free Trade Zone (AFTZ).

Caroline Freund and Emanuel Ornelas stated that the proliferation of regional trade agreements (RTAs) started in the early 1990s. Then, there are doubts on doing the trade.²⁶ RTAs imply both trade liberalization and trade discrimination.²⁷

E. Trade and Human Rights

By looking at the gap between trade and human rights, many experts and activists expect that there will be "strengthening" strategy in handling the condition. Gunduz assert that both human rights and development stand to gain from a 'one coin' strategy as follows.

*...incorporated into development efforts, adds a crucial dimension to the improvement of living standards of individuals, namely their entitlement to certain provisions, and avenues of redress if these are violated.*²⁸ *Approach in achieving the balance of trade and human rights.*

This can be happened if the actors on trade activities followed the base of human rights concepts. The prime of human rights protection to the development became

²⁴ Peter Maskell, *Towards a Knowledge-based Theory of the Geographical Cluster*, Oxford: Oxford University Press, 2001, p. 921.

²⁵ Anders Malmberg and Peter Maskell, "The elusive concept of localization economies: towards a knowledge-based theory of spatial clustering", *Environment and Planning A*, Vol. 34, 2002, p. 429.

²⁶ Caroline Freund and Emanuel Ornelas, *Op.cit.*, p. 16.

²⁷ Trade liberalization within a trading bloc tends to be beneficial when it promotes a shift of resources from inefficient domestic suppliers to more efficient producers within the region. Economists call this phenomenon 'trade creation'. Moreover, Freund and Ornelas mention that:

Conversely, a trading bloc is likely to be harmful if it generates a shift of resources from efficient external producers to inefficient producers within the region. This is a consequence of trade discrimination, which economists call 'trade diversion'. here is increasing evidence of external trade liberalisation following an RTA, especially in developing countries. (See, for example, Estevadeordal et al, 2008, for an analysis of how Latin American countries changed their import tariffs on non-members after forming or expanding their trade ties during the 1990s.) The lower external tariffs provide a double blessing: they imply that RTAs are responsible for more trade liberalisation than they mandate (amplifying trade creation) and for less trade discrimination than might be expected (limiting trade diversion).

²⁸ Canan Gunduz, "Human Rights and Development: The World Bank's Need for a Consistent Approach", *Development Studies Institute-London School of Economics and Political Science Houghton Street*, 2004, p. 8.

a prominent suggestion on the multi-stakeholder discussion. A long journey over the issue of aligning trade and human rights then resulted in the Declaration on the Rights to Development from UN.

The United Nations Human Rights Office of the High Commission states as follows.²⁹

...The pursuit of economic growth is not an end in itself. The Declaration clearly states that development is a comprehensive process aiming to improve "the well-being of the entire population and of all individuals on the basis of their active, free, and meaningful participation in development and in the fair distribution" of the resulting benefits...

The adaption of the 1986 Declaration on the Rights to Development adopted by the UN General Assembly through Resolution 41/128 of 4 December 1986 is a momentum of universal awareness of the link between development and human rights. The link between human rights and development is crucial because development is a conscious effort to place people at the center of development. This declaration became the based ground that is essential in perpetuating the presence of human rights for development that is recognized as an inalienable Right. Article 1 of the Rights to Development Declaration states as follows.

The Rights to development is inalienable human rights by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

The report of UNDP's Human Development in 2000 was a discussion of the interconnection between human rights and development and their mutually reinforcing aspects. The report underscores and appreciates the dimension of entitlements and corresponding duties introduced into the UNDP's work by the human rights approach.³⁰

F. Human Rights Concept

On human rights movement, the human rights at first being recognized as morally justifiable.³¹ Since the 1940s, most writers have sought the moral justification for universal human rights in secular reasoning rather than religious faith.³² Then, the human rights further developed.

French Jurist Karel Vasak called these two stages of human rights evolvement: Vasak called the "first generation" as follows.

²⁹ The United Nation Human Rights Office of the High Commission, "UN Declaration on the Rights to Development at 25", https://www.ohchr.org/Documents/Issues/Development/Infonote_RtD-25Feb_212011.pdf, accessed on June 2018.

³⁰ Canan Gunduz, *Op.cit.*, p. 9.

³¹ For example, if one can make the moral claim that no person should be sold into slavery, then the Rights not to be enslaved is, morally speaking, a human Rights, see Sam McFarland, "AAS Science and Human Rights Coalition", *Western Kentucky University*, February 2015, p. 2.

³² Sam McFarland, "Human Rights 101: A Brief College-Level Overview", https://www.aaas.org/sites/default/files/content_files/AAAS%20Coalition%20Human%20Rights%20101_0.pdf, accessed on June 2018, p. 1.

...which historically arose earlier, cover the kinds of civil and political Rights that are familiar to Americans in our own Bill of Rights (e.g., protection against cruel punishment, presumption of innocence, and freedom of thought and religion). Articles 22 to 28...³³

...“second generation” Rights, cover economic and social Rights (e.g., the Rights to education, employment, safe working conditions, health care, and social security in times of need), a kind of Rights not found in the American Bill of Rights. Many current human rights theorists discourage this distinction, as it may be ³⁴

The third generation is called as solidarity Rights.³⁵

...require not only the need to create an institutional support by the State, but, as in the case of second generation Rights, they need to restrict the first generation of Rights, through a so called “positive discrimination”, in the sense that these Rights, like the Rights of any minority, require a limitation of Rights of first generation. One of the third generation products is environmental law. The environmental law allows social groups to live in a healthy environment, clean, without harmful agents to health but, in the same time, involves a number of limitations of Rights of first or second generation, like owning a forest or the Rights to work.³⁶

From the historical development of human Rights, there are many obstacles in arranging and placing these principles. The principles of UDHR to be accepted in international societies faced challenges.

1. First, the Cold War placed the Soviet Union and its satellite states against the United States and its Western allies. Both parties dominated international politics and overwhelmed concern for human rights.
2. Second, from the late 1940s through the 1960s, many new nations emerged from colonial rule. These countries joined the UN and brought their own concerns for self-determination and development. Many of these nations also drifted toward one-party or one-man dictatorships ³⁷

The human rights framework emerged under the auspices of the United Nations in the wake of the Second World War with the adoption of the Universal Declaration of Human Rights in 1948. The treaties that are part of this framework are international, legally binding instruments to tackle inequality and discrimination. The universal

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ The Rights in the third generation of human Rights category cannot be exerted individually, but only by groups or collectivities of people. Example of Rights are: the Rights of people to self-determination; the Rights to peace; the Rights to development; the Rights to humanitarian assistance; environmental law; the Rights of sexual minorities, ethnic, religious, linguistic, etc. See Adrian Vasile Cornescu, “The Generations Of Human’s Rights” in David Sehnálek, Jiří Valdhans, Radovan Dávid, Libor Kyncl (eds.), *Dny práva – 2009 – Days of Law: the Conference Proceedings*, Brno: Masaryk University, 2009, p. 5.

³⁶ Adrian Vasile Cornescu, *Ibid.*, p. 6.

³⁷ Sam McFarland, *Op.cit.*, p. 5.

and egalitarian human rights are divided into (1) civil and political Rights and (2) economic, social, and cultural rights, each governed by an internationally binding treaty known as a Covenant. The International Covenant on Economic, Social, and Cultural Rights was drafted in 1954 and took effect in 1966. By 2013, it had over 160 parties: governments that either signed, or signed and ratified, the Covenant. It includes the rights to an adequate standard of living, initially with an explicit reference to food, clothing, and housing.³⁸

Lucena also states the other possibilities of economic and human rights.

*Research on the relationship between development of economic and the protection of human rights can be organized in at least two groups: first, articles that address the consequences of economic development for rights protection too simply, second, articles that focus on specific instruments of economic development, such as foreign investment, preferential trade agreements, World Bank and International Monetary Fund programs, international aid – and their impact on the protection of human rights. In both cases, the literature is dealing with first generation human rights, and, for the most part, rights to physical integrity.*³⁹

The view of relationship between human rights and trade (along with other economic institution such as the international organization and Transnational Corporation --TNCs) are strong. The multi-stakeholder movement is depicted on mechanism of multilateral initiative.

The connection between human rights and trade is identified on 2030 Agenda comprises with three main elements as follows.⁴⁰

1. The 17 Sustainable Development Goals (SDGs) and 169 targets to be achieved by all states in 2030.
2. The Means of Implementation (MoI) specifies the resources and partnerships that are necessary to reach the agreed goals and targets.
3. The Follow-Up and Review (FUR) processes and mechanisms that will monitor and guide the implementation, including the global indicators framework.

G. International Trade and Human Rights (cases)

Globalization has a major impact on all aspects of life, including economic growth and development. The issues of environmental degradation due to the trade are also depicted by Ree⁴¹ as follows.

³⁸ See Robert Bos, *Manual on the Human Rights to Safe Drinking Water and Sanitation for Practitioners*, London: The International Water Association (IWA) Publishing, 2016.

³⁹ Cristiane Lucena, "Human Rights and Development – An International Political Economy Perspective", *Brazilian Political Science Research*, Vol. 7, No. 3, 2013, p. 150.

⁴⁰ The Danish Institute for Human Rights, *Human Rights and the 2030 Agenda for Sustainable Development*, 2018.

⁴¹ ... on the trend toward higher catastrophe losses, and particularly on the increase in insured catastrophe losses. Swiss Re data show that the rise in insured losses is primarily driven by the natural catastrophes: while the claim burden due to natural disasters in the 1970s was just on US\$3 billion per year, it rose to US\$16 billion in the period 1987–2003, and in 2004 and 2005 it reached US\$45 billion and US\$78 billion, respectively, with

...the last decades have witnessed the worldwide increasing frequency and intensity of weather-related disasters. Windstorms, typhoons, floods, landslides, and heat waves were more and more frequent and we have experienced an upward trend in economic losses due to weather disasters, and an even stronger increase in insured losses.

Epstein shows how natural disaster affecting human beings.

*These events may be the prelude to a still more critical evolution in the future insofar as climate change seems to play a major role in this evolution. Minimizing the social cost of natural disasters should be a top priority in many industrialized countries and considered as an issue of the utmost importance for economic development and poverty reduction.*⁴²

Examples of cases of the global trade that threaten human rights can be seen on several of circumstance. The overfishing case, the FAO explains as follows.

*Fish and fishery products are among the world's most traded food commodities, and trade in the fisheries and aquaculture sector operates in an increasingly globalized environment.*⁴³

Argentina is a country with abundant of fishery commodities also being "clattered" by the cases of overfishing and destructive fishing cases. In Argentina, the trade liberalization on fisheries started in 1985-1999. In Argentina, the economic conditions that are expected to succeed in the presence of trade turn into a harming of environment. The threat on trade is increase higher than the positive sides of trade.

*...several negative effects have been documented. Fish biomass degraded and marine ecosystems experienced decline. In addition, corruption became endemic during this time, and over-capitalization developed, not only in terms of the fleet but also ports and other fisheries-related investments. Working conditions deteriorated and unemployment even caused social unrest, particularly when the declining hake catches led to stricter regulations. According to stakeholders directly involved in fisheries, the positive impacts outweighed the negative, but this position has been criticized.*⁴⁴

claim burden from Hurricane Katrina expected to amount to US\$45 billion. Insured losses are only the emerging part of the iceberg since there is practically no disaster insurance cover in the developing countries that have been severely affected by devastating natural catastrophes such as, in 2005, the earthquake in Kashmir and landslides and flooding triggered by heavy monsoon rains in India. The increase in the burden of natural catastrophes jointly results from an increase in the number and in the severity of natural catastrophic events and from economic choices such as the growth in urban areas, the endogenous location choices of individuals and the changes in land use. See Pierre Picard, "Natural Disaster Insurance and the Equity-Efficiency Trade-Off", *The Journal of Risk and Insurance*, Vol. 75, No. 1, 2008, pp. 17-38.

⁴² *Ibid.*

⁴³ Food and Agriculture Organization (FAO-UN), "Trade in fish and fishery products", <http://www.fao.org/3/a-i8003e.pdf>, accessed on June 2018.

⁴⁴ Håkan Eggert and Mads Greger, "Effects of Global Fisheries on Developing Countries Possibilities for Income and Threat of Depletion", *The Environment for Development (EfD)*, January 2009, p. 11.

According to Sumaila,

*Fish stocks support livelihoods and enhance the food security and incomes of millions of people while supporting vital ecological systems. However, overfishing, pollution, climate change, unsustainable trade and globalization, and illegal and unreported fishing are threatening the long-term sustainability of fisheries worldwide.*⁴⁵

The International organization like WTO takes a step by creating a multilateral agreement. The agreement initiated for stopping the illegal, unreported, and unregulated practice by issuing the regulation for sustainable fisheries. This initiation is followed by the roles of parties from the government and the private in reducing and preventing the harmful conditions.

H. Mechanism in Guarantee the Human Rights on Trade

Based on the human rights history we seen that the regime of human rights has been developed from focusing the protection of individual rights and develop to the others rights. It is started from issue of humanitarian and war, anti-racial and discrimination, women protection, children, migrant, disability, and indigenous people. Being expected, that human rights regime also in parallel within the society needs.

The prominent regulations also birthed in 1966, which are, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The International Covenant on Economic, Social, and Cultural Rights (ICESCR) particularly is the key point in enhancing the human rights protection on economic, social, and cultural issues.

*The ICESCR explicitly recognizes that a State's ability to fulfil ICESCR obligations, including the rate at which it progressively implements ICESCR Rights, is subject to its available resources. Therefore, more is expected in terms of performance from richer States than from poorer States. Financial resources are not the only resources of relevance to the ICESCR: there are also, for example, natural resources, human resources, information resources, and technological resources.*⁴⁶

This statement directed us that each country must have their own pattern in implemented the economic Rights. The pattern not only the regulation itself but in doing the "tripartite" of human rights duties in respecting, protecting, and fulfilling all human rights.⁴⁷ The aspect of "fulfilling" is part meaning the duties to facilitate, promote, and provide. Related with trade and human rights create imaged that

⁴⁵ See U. Rashid Sumaila, "Trade and Sustainable Fisheries", *Asian Development Bank Institute The Working Paper Series*, No. 676, 2017, p. 1.

⁴⁶ Robert E. Robertson, "Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social, and Cultural Rights" in Sarah Joseph, *Blame it on the WTO? A Human Rights Critique*, Oxford: Oxford University Press, 2013, p. 19.

⁴⁷ UN Economic and Social Council on report of the United Nations High Commissioner for Human Rights mentiona that: 'The duty to respect is a duty to refrain from activities that harm human Rights: it is the basic negative duty. The duties to protect and fulfill are positive duties.

“inauspicious” by the mechanism of regulation. There is a barrier in translating the human rights perspective from international law to the “in-country” human rights provisions. The hesitant view of human rights on trade issue as well the enforcement also increased. The numbers of cases above disclose that country still not favor to the protection of human rights and more reliable to the trade.

The infringement of human rights rise is happening in the countries that still pushing profit from trade becoming their main target of country. As a note, from several countries like Sri Lanka, Bangladesh, Mexico, Madagascar, and China, there are abuses of case on labor rights and employment issues. These related with wage rates in different contexts, gender discrimination in wages, labor are not living in decent or livable wages, excessive overtime, poor supply chain management, periods of peak seasonal demand, and last-minute adjustments caused by poor quality control in the production process – along with the low wages paid to workers.⁴⁸

Delphine Rabet urges that violation on human rights create more deprivation of society in enjoying the access of environment and life.⁴⁹

...economic freedom and globalization are important determinants of governments' respect for human rights. Competition between economies has become tougher and expanded to an unprecedented worldwide level. Global investors in financial markets exploit even marginal differences in the rates of return and thus generate pressure on local governments. This global development is sometimes viewed as being responsible for disenfranchisement, exploitation, and other forms of human rights abuses...

The concern also inspires the MDGs since 2005 to commit to eradicate extreme poverty and hunger, to achieve universal primary education, to promote gender equality and to empower women, to reduce child mortality, to improve maternal health, to combat HIV/AIDS and malaria and other diseases, to ensure environmental sustainability, and to develop a global partnership for development. These targets are meant to be achieved up to 2015.⁵⁰

The MDGs target in line with the Universal Declaration of Human Rights (UDHR) on Article 25 states as follows.

“Everyone has a Rights to a standard of living adequate for the health and well- being of himself and of his family, including food, clothing, housing, and medical care and necessary social services...”

The biggest step in human rights and trade is the changing perspective on WTO itself. Countries also step down in protesting the trade “greedy schemes” by doing standardization on government interference. Government interference is also

⁴⁸ Andrew Lang, “Trade Agreements, Business and Human Right: The Case of Export Processing Zones”, *Corporate Social Responsibility Initiative Working Paper*, No. 57, 2010, p. 19.

⁴⁹ Axel Dreher (et.al.), “Globalization, Economic Freedom and Human Rights”, *Center for European Governance and Economic and Development Research*, No. 115, 2010, p. 2.

⁵⁰ being continued by the SDGs program.

required as set out in the ICESCR as follows.

Article 2 (Part II)⁵¹ mentioned that:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

Based on the convention above we can underline the responsibility of countries in controlling the issue of economic and particularly on natural resource usage. Furthermore, countries are needed to make a control and protection in availability of natural resource. The covenant article strongly mentions about the individual approach as well as international assistance and cooperation⁵² in taking the rights being protected.

I. Connecting the Business and Human Rights

One issue of trade that is connected to human rights can be traced in the case of deforestation, it is realized through a tropical anti-tropical movement in developed countries, which rejects and prohibits the utilization of wood products produced from tropical forests. They allege that the wood has been produced in ways that are not friendly to the environment that leads to deforestation. This pressure resulted decrease in foreign exchange earned through exports from tropical forest countries of processed wood products.

Other movements are in Transnational Cooperation (TNC) sides. The first one, is the development of United Nations is doing best practice for TNC in being as actor of trade in business and obedient in promoting environmental, social and human rights standards.

⁵¹ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27.

⁵² The issue of human Rights also take place on the discussion of TRIPS, ...the interaction of human Rights with multilateral trade systems produces outcomes on three levels. First, WTO law and its interpretation has changed as a result of the negotiations by developing countries that used human Rights law and norms to inform and strengthen their bargaining positions at the Doha Ministerial and the negotiations on Paragraph 6 of The DOHA Declaration. Secondly, the projection of human Rights law onto the issue of access to medicine influenced the behavior of states inside and outside the WTO. The behavioral change was critical both within the member-driven WTO system of negotiations and dispute settlement, and also among inter-state bargaining outside the WTO. Thirdly, the human Rights system was able to achieve substantive outcomes outside the WTO with respect to the agreements of pharmaceutical companies to provide low-cost medicines to poor countries. Although this strategy produced normative and substantive changes in the WTO system, the ability of developing countries to balance their obligations to fulfill the Rights to medicine with obligations to provide patent protection is still hampered by the limited ability of the WTO to mediate interstate bargaining power within the international trade system, and competition between intellectual property and human Rights norms.

See Christopher Butler, “Human Rights and the World Trade Organization: the Rights to Essential Medicines and the Trips Agreement”, *Journal of International Law and Policy*, Vol. 5, No. 1, 2007, p. 2.

*...these efforts started in the 1970s with the discussions about a Code of Conduct for TNCs. They were continued in the late 1990s, with the attempt to adopt the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights...*⁵³

The needs of TNC in shaping their reputation are voiced by countries, especially, from Ecuador and CSO that being actively campaign for a binding treaty on business and human rights.

In September 2013, the Government of Ecuador delivered a statement on behalf of 85-member states of the United Nations (UN) at the 24th session of the Human Rights Council (UNHRC) asking for a legally binding framework to regulate the activities of transnational corporations and to provide appropriate protection, justice, and remedies for the victims of human rights abuses.⁵⁴ The key objective of corporate interest groups over the decades was to prevent three sets of measures:⁵⁵

1. the adoption of international legally binding rules to prevent human rights abuses related to TNC practices;
2. the introduction of monitoring and accountability mechanisms for TNCs under the aegis of the UN; and
3. the establishment of an international system that would allow for suing and sanctioning those corporations who are responsible for human rights abuses and gaining reparations where national legislation is insufficient or not sufficiently implemented.

One of business actor, for instance, IKEA, had built their policy for “Business and children’s rights in the workplace. On IKEA Group, described the company’s approach to children’s rights: “IKEA’s child labor code of conduct ‘The IKEA Way on Preventing Child Labor’, which is part of IKEA’ overall code, seeks to prevent child labor, and applies to all suppliers and their sub-contractors.”⁵⁶

The UNICEF supports the IKEA program that aligns with the UNICEF program.

...At the same time, business can play an important role in promoting decent youth employment and supporting the rights of children who have reached the general minimum age for employment. For example, companies can remove obstacles to encourage and assist young workers to combine work and education. They can contribute to the employability and skills development of young people through the

⁵³ Jens Martens and Judith Richter, “Corporate Influence on the Business and Human Rights Agenda of the United Nations”, *Bischöfliches Hilfswerk MISEREOR e.V.-Germany*, 2014, p. 5.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 27.

⁵⁶ ...It is based on national law and the Convention on the Rights of the Child and requires that all suppliers recognise the Convention and act in the best interests of the child. In addition, 15 years ago, the management of the IKEA Group decided to move from only focusing on eliminating child labour through compliance and auditing of its supply chain, towards a comprehensive commitment to tackling the root causes of child labour – such as debt, poverty, the lack of access to education, disability and ill health – through strategic investments and partnerships in South Asia, mainly in India, where many of its textiles and carpets are purchased.”

provision of vocational training and apprenticeship programmes. Why are these issues important for business? Violations in the workplace – from child labour to hazardous working conditions to discrimination against mothers or pregnant women—deprive...⁵⁷

These approach by private sector actors would be the best practices protection that come from the internal policy of the corporate itself that influence the protection of human rights in trade and uniform practice for global economy movement.

J. Conclusion

There are two approaches for the protection of trade and human rights from violations. The first one is the international approach. The international organizations, such as WTO and international CSO, can execute the propaganda of human rights on their agendas. For example, the concern of the usage of tropical-forest wood can be addressed to states to shift their consumption patterns to a more environmental-friendly option. These can be achieved when consumers choose to use woods that are not resulted from illegal logging practices impacting the forest degradation and deforestation. The natural resource conservation is a part of their role to support human right protection in the field of environmental protection.

The second one is state internal regulation approach. In the national level, state must perform some actions. The government interference can be justified based on the perspective of justice enforcer. The government interference may consider public choices and needs. The case of Ecuador shows that government is the key pivotal of policy and regulation, as well as the enforcer for any kinds of trade and human rights issues. When the Ecuador government delivered their needs to shape the TNC practice in their session of the Human Rights Council (UNHRC), we can learn that local and national government is the best instrument in building and protecting the human rights and trade. This also inspires trade practices, as well as the UN initiation for the protection by the establishment of the UN Guiding Principles for each state in organizing their trade.

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⁵⁷ United Nations Children's Fund (UNICEF), "The Business and Human Rights Review: Implementing the Guiding Principles", Allen & Overy LLP's Human Rights Working Group, Issue 2, Spring 2013, p.26.

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