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## PHILIPPINES POLICY OF WAR ON DRUGS UNDER INTERNATIONAL LAW

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**Abstract :** This study aims to explain what human rights violations occurred in the War on Drugs Policy in the Philippines and the response given by the international community. The method used in this research is the qualitative method. This research is motivated by the Philippines' policy to eradicate drugs in a massive way that causes human rights violations. In this study, the theory used is Human Rights and International Law. The results of this study found that human rights violations committed by the Philippines have violated international human rights law as regulated in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). In addition, more special efforts are needed from the United Nations (UN) and the International Criminal Court (ICC) in stopping human rights violations that occur in the Philippines.

**Keywords:** Human Rights Violations, War on Drugs, International Law, Philippines, United Nations, ICC.

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### INTRODUCTION

Human Rights (HAM) are fundamental rights that are owned by every individual, and no one should be able to violate these rights (Sen, 2005; Zandy, 2019). Human rights have even become a topic of discussion in the international community after human rights were included in the United Nations Charter in 1945 which finally discussed the existence of systematic protection of human rights in the international system (Ardhana & Puspitasari, 2023; Hannum, 2016; Saitya, 2017). The Universal Declaration of Human Rights (UDHR), which is a milestone in the journey of human rights, stipulates that human rights are inalienable and that these rights are the basis of freedom, justice, and peace in the world (Abu Alhaj, 2023; Elkins & Ginsburg, 2022; Zandy, 2019). In addition, human rights also need to be protected by the rule of law so that people do not

carry out rebellions to free themselves.

However, until now there are still many violations of human rights that occur around the world. Some of these violations were committed by the government or the state itself. This is certainly very contrary to international human rights law which states that the state should protect the human rights of all its citizens.

One of the human rights violations that are still happening today is the human rights violation committed by the Philippines in the implementation of the War on Drugs Policy. This policy is a policy that aims to eradicate drugs and reduce the crime rate in the Philippines, but it turns out that in its implementation there are violations of human rights committed by police officers and supported by the government against drug users (Harada et al., 2021; Lasco, 2018; Yamada et al., 2021). Drug users are deprived of their rights and freedoms including the right to life and the right to be punished through a fair and legal trial.

The human rights violations committed by the Philippines violate international human rights laws that have been regulated through the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Therefore, the United Nations as an international organization that also focuses on protecting human rights issued resolution 41/2 as an effort to stop the War on Drugs policy (de Paula Silva, 2021; Otu, 2011; Scherlen, 2012). In addition, the International Criminal Court (ICC) as an international tribunal also decided to conduct a preliminary examination of the Philippines regarding the human rights violations that have occurred so far.

In compiling this journal, the author uses several previous studies as a source of writing this study. The first previous research was a study written by Regilme. In this study, the focus is how the War on Drugs policy carried out by the Philippines can have an impact on the security stability of countries in ASEAN, especially countries adjacent to the Philippines (Regilme Jr, 2021).

The second previous research is a study written by Yogaswara. In this study, the focus is how Amnesty International responded to human rights violations committed in the Philippines and what efforts were made by Amnesty International so that the Philippines could stop committing these human rights violations (Yogaswara, 2020).

To analyze the problems in this research, the author uses the Theory of Human Rights and International Law. Human Rights (HAM) can simply be said to be rights that naturally have been inherent in humans since they were born, and no one can interfere with or take away these rights. Human rights that are owned by humans are closely related to human dignity, without these human rights humans cannot live following their dignity and worth (May & Daly, 2022; Schachter, 1983).

Meanwhile, Louis Henkin defines human rights as a form of freedom, immunity, and interests or benefits that can be legally recognized as rights by individuals or groups (Henkin, 1995). Based on this explanation, it can be interpreted that human rights are things that have been regulated in law, both national and international law, but also become something that can be fought for or demanded by individuals or groups under the applicable law in that place.

International law defined by Theodore D. Woolsey in his book *International Law an Aid in Teaching*, and in *Historical Studies* in a broad and abstract sense is a law or rules of relations between nations that are gathered from their rights and moral demands, in the words otherwise it is an expression of the state's legal and moral relationship with one another (Woolsey, 1875). Meanwhile, Hans Kelsen, considers law to be an order that stipulates patterns of behavior that must be followed along with the provision of punishment for an illegal act that applies both in the national and international scope. Due to the equality of law in the national and international scope, Kelsen stated that international law is higher or more basic than the national law of the state. Thus, Kelsen stated that the basic norms of the international legal order are the main reason for the enactment of the national legal order (Kelsen, 2017). Based on the above explanations, it can be concluded that international law is a law that applies universally, and this law can bind countries in the world. by applying international law to their national law. However, the position of international law will be higher if a country commits a violation that has been determined in international law. Under these conditions, international law should make reparations in that country using diplomatic protests or international courts.

## **METHOD**

The method used in this research is the qualitative method. According to Sugiyono, qualitative research methods are research methods based on the philosophy of postpositivism. Qualitative research seeks to explain in detail the problems studied in fact under the data obtained by the author (Aspers & Corte, 2019). In research with qualitative methods the author is the main instrument in collecting and interpreting data. The data obtained by the author is only a tool that will then be explained again by the author (Auliya et al., 2020). The data collection technique used by the author in this research is a literature study. Literature study is a data collection technique carried out by reviewing books, literature, notes, journals, articles as well as various reports related to the case studies discussed by the authors in this study. The collected data will then be put together and analyzed to produce a comprehensive understanding and will be described in the form of a short description, or with a narrative

text(Sugiyono, 2010).

## RESULT AND DISCUSSION

The Philippines is one country that is still struggling to fight drugs. Drug trafficking in the Philippines began in 1841 when traders from China brought opium into the Philippines. At that time there were more than two hundred places where Chinese and Filipinos could buy drugs freely. Many opium trades at that time led the government to form the Opium Control Commission in 1903 which aimed to study the state and problems of opium in the Philippines and make recommendations. The result of the recommendations given is to carry out a progressive ban on opium users(Zarco, 1995).

To realize this, in 1908 the policy "An Act to Revise and Amend The Tariff Laws of the Philippine Islands, and for Other Purposes" was formed. which could authorize the colonial government in the Philippines to strictly prohibit the import or sale of opium and could take other measures that may be necessary to suppress the crimes caused by the sale and use of opium. In addition, in this policy, the government also enforces laws for opium users.

In the 1970s the Philippines experienced a severe drug wave, causing the then President of the Philippines, Ferdinand Marcos, to declare martial law and enact Republic Act no. 6425 or better known as the Dangerous Drugs Act of 1972. This law imposes a more severe penalty for drug offenses, namely the death penalty. In addition, this law is also a reference for the formation of Dangerous Drugs Board (DDB) is tasked with dealing with drug problems in the Philippines(De Jesus et al., 2013).

The law currently used by the Philippines in dealing with drug problems is the Republic Act 9165 or known as the Comprehensive Dangerous Drugs Act of 2002(De Jesus et al., 2013). This law was passed by the Philippine Congress on June 7, 2002. Under this law, drug abuse is considered a threat to national integrity and the well-being of human resources. The law also details tougher and stricter policies on drug trafficking. This law also restructured the drug law enforcement system in the Philippines and established the Philippine Drug Enforcement Agency (PDEA) under the office of the President which is responsible for the efficient and effective enforcement of drug laws.

In 2016, there were as many as 1.8 million Filipinos using drugs(Rappler, 2016). These drug users are individuals who have used illegal drugs more than once

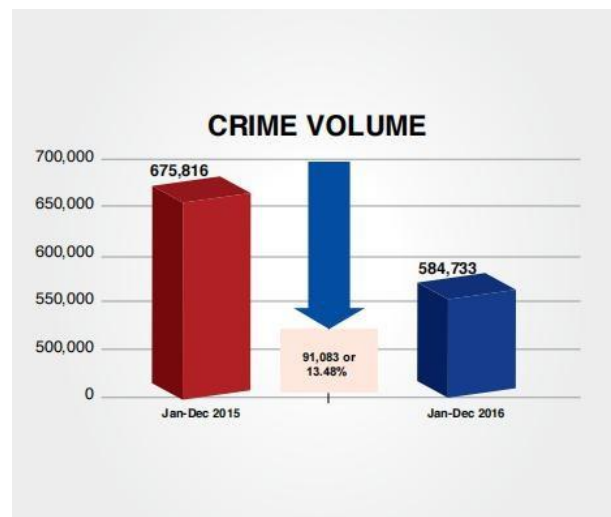
from January 1, 2015, to February 5, 2016. These users are on average 31 years old, with the highest percentage belonging to the age group 40 years and over, almost 21%, followed by the 30–34-year age group with 19%. The average duration of using drugs is more than 6 years. The types of drugs that are most often abused include shabu with a percentage of 92.40%, followed by marijuana with a percentage of about 22.52%, and ecstasy with a percentage of 1.00%(Rojas, 2016).

Many drug users in the Philippines then began to have an impact in several aspects. Drug use that is done continuously can cause addiction for its users. The effects of drug addiction on mental health include(Bnn, 2014):

1. Can cause depression
2. Can cause mental disorders, either mild or severe mental disorders, and
3. Can cause the desire to commit crimes, violence, and destruction.

The negative impact that can be caused by drug addiction is not only harmful to yourself but also to other people and the environment. This is marked by the emergence of a desire to commit crimes, violence, and destruction by drug users. Most of them commit crimes to fulfill their desire to use drugs, so they commit theft or robbery to be able to buy drugs. This link between drug use and crime is detrimental to the Philippines. The increase in crime rates can disrupt national security, causing people to feel insecure. The crime rate in the Philippines can be seen in the table below

Graphic Crime Volume in Philipines



Source: PNP Annual Report 2016

Based on the table above, the volume of crime in the Philippines in 2015 was 675,816 cases from January to December 2015. While in 2016, the volume of crime in the Philippines was recorded at 583,733 cases, which overall decreased by 91,083 cases or 13.48% from 2015 (Rojas, 2016).

There are three most common crimes committed by Filipinos, namely theft, crimes that cause bodily harm or injury, and robbery. There is a possibility that could be the reason why these three types of crimes are most often committed by Filipinos. This is because dependence on drugs can trigger a person to commit crimes, violence, and destruction. This then causes the three crimes to become the most common types of crimes because in 2015 the Philippines had many drug users. To find out more about this below is a table for the most common crimes committed in the Philippines.

Picture. 2 Most Common Crimes Committed in the Philippines

|                 | January – December<br>2015 | January – December<br>2016 |
|-----------------|----------------------------|----------------------------|
| Theft           | 82,751                     | 49,613                     |
| Physical Injury | 49,845                     | 35,796                     |
| Robbery         | 31,741                     | 21,217                     |

*Source: PNP Annual Report 2016*

Based on the table above, in 2016 the number of reported theft cases was 49,613, this number decreased by 33,138 cases or by 5.59% from 2015 with 82,751 cases. In 2016 cases of physical injury or injury amounted to 35,796 where this number also decreased by 14,049 cases from 2016 which had 49,845 cases. In addition, the number of robbery cases in 2016 also decreased, from 31,741 cases in 2015 reduced to 21,217 in 2016 or decreased by 0.58%.

President Duterte believes that the link between drugs and crime is quite close. So that the more drug users in the Philippines, the greater the number of crimes in the Philippines. This can happen because the effect that drugs give to users is that they can trigger the user to commit crimes. In addition, President Duterte also believes that drugs can threaten the future of the young generation of the Philippines. Therefore, the War on Drugs policy was enacted to reduce the circulation and use of drugs and to reduce the level of crime that could threaten national security in the Philippines.

### **Human Rights Violations in the Policy of *War on Drugs***

Since the election of President Rodrigo Duterte in 2016, the Philippines has become increasingly determined to reduce crime and eradicate drug trafficking and use. This is also supported by President Duterte, who since the campaign period has promised to eradicate drugs which according to him is one of the triggers for the increasing crime rate in the Philippines. During his campaign, President Duterte promised an order above the law, which attracted Filipino voters as they began to feel dissatisfied with the ineffectiveness of the Philippine judiciary in dealing with crime and drug issues. In an election campaign speech on June 5, 2016, Duterte encouraged his citizens to kill suspected drug dealers or users as a 'duty and offered rewards to those who turn over drug dealers either dead or alive(Amnesty, 2016).

This was further emphasized by President Duterte when he held his inauguration speech on June 30, 2016. President Duterte said: "If you know of any addicts, go ahead and kill them yourself". This indicates that he has indirectly approved the killing of drug dealers and users in the Philippines. But during his inauguration address, President Duterte also pledged to respect international treaties and obligations as well as national domestic laws. This is of course very contrary to what he did after forming the War on Drugs policy. President Duterte dares to take a firm stand against criminals and drugs because when he served as mayor of Davao, he managed to reduce the number of crimes by executing criminals.

After being enacted, the War on Drugs policy indicated a violation of human rights against drug dealers and users. These human rights violations are in the form of extrajudicial killings carried out by police officers against drug dealers and users.

### **Double Barrel - Project Tokhang**

In the circular Command Memorandum Circular No. 16-2016 issued by the PNP, launched an anti-drug campaign, namely the "Double Barrel" project. One component of the project is "Project Tokhang" which is designed to eradicate drugs at the smallest government scale by conducting house-to-house visits to persuade suspected drug users or dealers to stop drug activities. Tokhang comes from the words "Toktok" which means to knock and "Hangyo" which means to beg. This is because the police officers will knock on the door of people who are suspected drug users or dealers and ask them to surrender themselves to the police and will be monitored for further examination.

The drug dealers and users arrested in the Tokhang Project were not allowed to refuse police officers who came to their homes and arrested them without a formal arrest warrant. Even so, they still must be caught and turn themselves in to the police without being allowed to gain the right to protect themselves.



Although in the Circular Command Memorandum No. 16-2016 drug dealers and users are encouraged to surrender voluntarily, there is no legal certainty regarding the safety of the suspects, there is only mention of access to legal counsel if the person has agreed to surrender himself so the suspects vulnerable to intimidation and pressure. In addition, if drug dealers and users refuse home visits, even if the police officers do not have an official search warrant, the person can be charged with a legal case.

### Execution

Of the many violations committed, extrajudicial killing by way of shooting death is a violation of human rights that takes the most lives. The table below shows the number of victims during the implementation of the War on Drugs policy to eradicate drugs in the Philippines.

Table. 1 Number of Victims in the War on Drugs Policy July 2016 to January 2020

| Number | Details                                     |
|--------|---|
| 8,663  | Drug-related deaths                         |
| 5,601  | Deaths in police operations                 |
| 3,062  | Deaths under inquiry which are drug-related |

Source: OHCHR

Based on the table above, thousands of people have become victims of unlawful killings during the implementation of the War on Drugs policy. It stated that 8,663 people were reportedly killed in drug-related cases, with details of 5,601 killed in police operations, and 3,062 others died in drug-related investigations.

A percentage of 34 people died every day during the first six months of Duterte's presidency. Many of the victims were found in street corners or back alleys that were rarely traveled wrapped in duct tape, bodies covered with bullet or stab wounds, and other signs of violence. The Philippine National Police has claimed responsibility for 2,615 killings, on the basis that the suspects resisted and refused to follow police orders. Police attribute the remaining number of cases to 'unidentified gunmen', although no evidence has been publicly disclosed about the outcome of the investigation.

The implementation of the War on Drugs policy which is indicated to have violated human rights has made the Philippines receive criticism both



domestically and internationally. This is of course accepted by the Philippines because the implementation of the War on Drugs policy has robbed a person of the right to life, and a person's right to get a legal trial for wrongdoing.

### **Efforts to Stop Policy of *War on Drugs***

Many victims in the War on Drugs policy in the Philippines, of course, received a response from the international community. Two international institutions have shown their seriousness in responding to human rights violations in the Philippines. They have made efforts so that the human rights violations that occurred in the Philippines can be immediately stopped.

#### **1. United Nations (UN)**

On 11 July 2019, the United Nations Human Rights Council (OHCHR) approved a resolution passed by Iceland to request the office of the UN Human Rights Council to issue a comprehensive report on human rights to the UN Human Rights Council by June 2020. In the end, the UN Human Rights Council adopted resolution 41/2 on the Promotion and Protection of Human Rights in the Philippines. In this resolution, the UN Human Rights Council expressed concern over allegations of human rights violations that occurred in the Philippines, related to killings, enforced disappearances, arbitrary arrests and detention, intimidation and persecution or violence against civilians, human rights defenders, journalists, lawyers and members of the political opposition, and restrictions on freedom of expression.

Therefore, in this resolution, the UN Human Rights Council stated:

1. Urge the Philippine government to take all necessary measures to prevent extrajudicial killings and enforced disappearances, and to hold perpetrators accountable, by international norms and standards, including due process and the rule of law.
2. Calls on the Philippine government to cooperate with the UN Human Rights Council.
3. Requesting the High Commissioner to prepare a comprehensive written report on the human rights situation in the Philippines and present it to the Human Rights Council at its forty-fourth session, to be followed by an enhanced interactive dialogue.

Following the issuance of this resolution, on June 29, 2020, a report issued by OHCHR UN human rights experts renewed the call for an in-person investigation that was independent and impartial. They stated that human rights violations that occurred in the Philippines have been carried out

widely and systematically against drug dealers and users.<sup>26</sup> In addition, they also stated that the current human rights situation in the Philippines has reached a level that requires strong intervention by the United Nations. The Human Rights Council must also make every effort to prevent the continued widespread and systematic human rights violations against the Filipino people.

Therefore, human rights experts urge the UN Human Rights Council to carry out:

1. Establish a direct international investigation of the human rights situation in the Philippines.
2. Strengthening OHCHR's mandate to continue monitoring and reporting on human rights violations in the Philippines.
3. Calls on the ICC to expedite and prioritize the completion of a preliminary examination of the situation in the Philippines.

## **2. *International Criminal Court (ICC)***

Efforts to stop human rights violations that occur in the War on Drugs policy have been carried out by the ICC in 2018 when a statement from the Prosecutor of the International Criminal Court was issued. Fatou Bensouda regarding the opening of a preliminary examination of the situation in the Philippines. This preliminary examination of the situation will analyze the crimes committed in the Philippines from 1 July 2016 in

War on Drugs policy. This preliminary examination does not have a specific time limit, as it depends on the facts and circumstances of each situation that will arise. During this preliminary examination period, the ICC will collect information that will determine whether to initiate an investigation.

After years without any further information, finally, on June 14, 2021, the ICC stated that the preliminary examination had been completed and to continue investigations regarding the War on Drugs situation in the Philippines.<sup>29</sup> In the statement, the Prosecutor of the ICC Fatou Bensouda said that since February 8, 2018, the ICC has been analyzing publicly circulated information and information that has been received. The ICC has collected relevant information and assessed open-source information on every national process being carried out by the Philippine government. In addition, during the preliminary examination period, the ICC has engaged and consulted with relevant stakeholders to address relevant issues and to seek further information to assess the situation.

Based on these data, the ICC has found that human rights violations in the form of murder have occurred in the implementation of the War on Drugs Policy in the

Philippines from July 1, 2016, to March 16, 2019. In addition, based on a thorough preliminary examination process, it was found that officers from The PNP have illegally killed thousands of civilians in that period.

Currently, the ICC Prosecutor is waiting for a decision from the Jury to continue a full investigation into the Philippines regarding human rights violations in the implementation of the War on Drugs policy.

## CONCLUSION

Human rights violations committed by the Philippines have violated international law on human rights as regulated in the UDHR and ICCPR. The formation of a War on Drugs Policy based on the national interest to reduce crime rates and eradicate drugs ultimately creates a new problem, namely human rights violations committed against drug users and dealers. The extrajudicial killings committed by Philippine police officers constitute a violation of human rights in terms of the right to life which has also been regulated in the UDHR and ICCPR.

In international law, human rights must be protected by all law enforcers in the world. The relationship between international law and national law is very close, Hans Kelsen views the relationship between national law and international law as bringing the state into a unified or related relationship with international law so that all 'elements' owned by the state are determined by international law.

In other words, international law can bind its member states to carry out the contents of a treaty. In this case, the Philippines as a member state of the United Nations and has ratified the Rome Statute agreement should carry out its national policies based on the agreement. But the Philippines has failed to protect the human rights of its citizens.

International law or international courts can intervene against a country if the country is deemed unable to protect the human rights of its citizens. In this case, the ICC as one of the international court institutions that can impose sanctions or penalties on perpetrators of human rights violators has the authority to impose penalties on the Philippines. This can be done because the Philippines is considered unable to protect human rights. After all, drug dealers and users can pose a serious threat to the future of the young generation in the Philippines.

Efforts made by the ICC and the UN Human Rights Council have shown that they are international institutions that protect human rights globally will continue to try to protect the rights that should be obtained by drug dealers and users in the Philippines based on international law that has been established jointly with countries in the world.

This is done because even though the perpetrators are drug dealers and users who can threaten the future of the young Filipino generation, they also have the right to live, the right to be tried in a fair and legal court, and the right to receive rehabilitation to be free from addiction. drugs. The shootings carried out by the Philippine government have removed the rights that drug dealers and users should have.

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