

# Unsuccessfully State in Resolving Human Rights Violations<sup>1</sup>

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## Abstract

Each state has the right to control the entry of foreigners into their territories, as part of implementing its sovereignty. However, in carrying out these national policies, the State must not neglect its international obligations. Including the obligations toward treaties that have been ratified as well as obligations to international human rights. This study aims to analyze the failure of the state in addressing human rights violations against Qatar nationals by the United Arab Emirates caused by the implementation of the blockade and diplomatic termination. This research uses normative research type. The results of this study indicate that the measures and policies which are enforced by the United Arab Emirates towards Qatar after the blockade and diplomatic termination have had a significant impact on fulfilling human rights for Qatar citizens and citizens of the United Arab Emirates. The occurrence of separation of a family as a violation of the right to life and children's rights is interpreted as an inability or inability and/or unwillingness of the state in carrying out its duties, namely to respect, to fulfill, and to protect human rights.

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## I. Introduction

Human Rights have attained a high position in International Law through the attainment of universal understanding among States and Nations in the world so that state obligations towards the protection of Human Rights have also become an inseparable part of countries in the association of international community's based on International law.<sup>2</sup> Human rights are phenomena that have brought various changes in the history of human life. Differences in perception in accepting and placing human rights as a benchmark in the life of the nation are inseparable from the pros and cons. Different perceptions about human rights often lead to differences in their implementation. For the majority group with the power of the authority that they have will tend to limit the development of the meaning of human rights itself, and is often done to maintain the ongoing power.<sup>3</sup>

Human rights are owned by everyone since he was born and is a gift or gift from God to each of His people so that no one has the right to seize it. Human rights apply universally to every person, individual or group on this earth. Every person has the right to enjoy their human rights whether they are women, men, children, parents in good health or mentally and psychologically disabled.<sup>4</sup> As contained in the Charter of Human Rights, naturally, universally and eternally includes the right to life, the right to family, the right to develop themselves, the right to justice, the right to freedom, the right to communicate, the right to security, and the right to prosperity, which therefore cannot be taken away by anyone. In human rights law, the state in this

<sup>1</sup> This is a part of the thesis of magister program by the title "Human Rights Violations against Qatar Citizens by United Arab Emirates Post Blockade and Diplomatic Termination" Law Faculty, Hasanuddin University, 2019

<sup>2</sup> Christianugra Philip. 2016. "*Tanggung Jawab Negara terhadap perlindungan Hak Asasi Manusia Menurut Hukum Internasional* (The State's responsibility for the protection of human rights according to international law)" Lex Administratum, Vol 4, No.2. Available at <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/11293>.

<sup>3</sup> Tri Syafari, 2008. "International Standard as an instrument of Human rights protection for prisoners; between the requirement and reality". Makassar, p. 3

<sup>4</sup> Iin Karita Sakharina, 2016, "*Kewajiban Negara Terhadap Pemenuhan Hak Atas Kecukupan Pangan yang Layak di Indonesia* (The State's Obligation to Fulfill the Right to Adequate Food in Indonesia)", Pustaka Pena Press. Makassar, p. 2

case is represented by the government as a duty bearer. Obligations carried by the state consist of three forms, namely to respect, to protect and to fulfill.<sup>1</sup>

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The right to gather together as a family is a basic right that is a necessity for every human being that must be fulfilled, and is part of human rights. Family rights are important in the context of fulfilling other human rights because the right to live together as a family or has the most urgent nature among other human rights such as the right to life, the right to life, the rights of welfare and the rights of children's interests.

The policies adopted by the United Arab Emirates towards Qatar after the blockade and diplomatic termination have had a significant impact on the fulfillment of human rights for Qatar citizens and citizens of the United Arab Emirates. The impact of the blockade and also the severance of diplomatic relations imposed by the UAE government affected the expulsion of Qatar nationals collectively. They are forced to leave their families, businesses, jobs, and property. The UAE also prohibits Qatar from entering or passing through UAE territory.<sup>2</sup>

On Monday 5th June 2017, four Arab countries namely Saudi Arabia, Egypt, the United Arab Emirates, and Bahrain terminate diplomatic relations with Qatar. The realization of the policy was carried out by reducing the number of Jordanian diplomatic representatives in Qatar and revoking the Al Jazeera TV license. The blockade and closure of air, sea, and land areas were imposed for all transportation access to Qatar. The Gulf Cooperation Council (GCC) countries led by Saudi Arabia claim that Qatar has supported and funded radical Islamic movements in various countries. As quoted from the Saudi Arabian SPA news agency, termination of diplomatic relations is needed to protect them from terrorism and extremism.<sup>3</sup>

The various of accusations directed against Qatar provide a very political indication and are detrimental to all the parties, not only the Qatar government but also by carrying out a blockade by closing all access to transportation and also severing diplomatic relations have had a significant impact on violating human rights, by implementing that policies, the United Arab Emirates government which led the blockade also forcibly displaced thousands of Qatar citizens from their country and ordered their citizens to leave Qatar that had a significant impact on mixed families, namely that the separation of families disrupted the most basic elements of daily life that can affected the residents. The right to get marries and lives together as a family and also the rights of children.

## II. Research Method

This type of research is normative legal research<sup>4</sup> with the statutory approach and conceptual approach.<sup>5</sup> The data used are secondary data collected through documentation studies. The collected data is then analyzed qualitatively.

## III. Results and Discussion

<sup>1</sup> *Ibid.*, p. 3

<sup>2</sup> Tribunnews.com, 2018, *Komnas HAM Qatar Tuding Arab Saudi dan UEA Lakukan Pelanggaran Berat* (Qatar National Human Rights Commission Accuses Saudi Arabia and UAE of Committing Serious Violations), Available at <http://www.tribunnews.com/internasional/2018/06/24/komnas-ham-qatar-tuding-arab-saudi-dan-uea-lakukan-pelanggaran-berat>.

<sup>3</sup> M. Fakhry Ghafur, 2017, "*Krisis Diplomati Qatar dan Implikasinya Terhadap Geopolitik Timur Tengah* (Qatar's Diplomatic Crisis and Its Implications for Middle Eastern Geopolitics)", Available at <http://www.politik.lipi.go.id/kegiatan/1148-catatan-media-briefing-krisis-diplomatik-qatar-dan-implikasinya-terhadap-geopolitik-timur-tengah-2>

<sup>4</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Normative Legal Research: A Short Review), Rajawali Press, Jakarta. 2004, p. 13-14

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Legal Research), Prenadamedia Group Jakarta, Jakarta: Kencana Prenada Media Group, 2005, p. 35

## Separation of Family

The collective expulsion of Qatar from the United Arab Emirates and the withdrawal of the Emirates in Qatar, the prohibition or restriction of entry and travel to the United Arab Emirates have had a significant and profound impact on mixed families. According to the OHCHR report on the impact of the Gulf Cooperation Council crisis on human rights in December, the June 5, 2017 Decree has caused and led to cases of temporary family separation or even the potential to occur for a long time in all countries concerned, including in the country United Arab Emirates, with the expulsion of all Qatar nationals who are in the United Arab Emirates and also ordered its citizens (United Arab Emirates) to leave Qatar with their children within 14 days, with the threat of civil punishment, including revocation of citizenship them and the imposition of criminal sanctions, has caused psychological distress and various other difficulties for every individual who has a family in Qatar and the United Arab Emirates.<sup>1</sup>

According to official OHCHR data,<sup>2</sup> in June 2017 there were around 3,694 mixed marriages involving Qatar citizens and United Arab Emirates citizens. The non-Qatar couple and their children have faced uncertainty about the problem of family separation that they face. The expulsion policy adopted by the United Arab Emirates government has a significant impact on the separation of families which violates the right to live together as a family unit. This is a violation of international human rights law and also agreements on human rights that have been ratified by the state.

Forced family separation had a major impact on the most vulnerable groups in society. A Qatar woman explained to Amnesty International that she had been separated from her husband, and could only visit four of her children (including one autistic child) once since June when the political crisis began. Whereas before, he used to visit them every weekend. He misses his children, and wants to try to talk to his family in the United Arab Emirates (via the internet), but that is not easy to do, when connected via the internet they are very careful in talking, they can only talk how much they miss each other, nothing else.<sup>3</sup>

## Family Separation is a Violation of the Right to Live together as a Family Unity.

The legal framework in which the right to family life and family unity is the right of all individuals to established family life and the right to have and maintain family relationships. This right is recognized in various provisions in the International Human Rights Law instruments, including Article 16 of the UDHR, Article 17 and Article 23 of the ICCPR.

Under international human rights law, families are recognized as a basic group unit of society and are entitled to protection and assistance. In connection with the above, the right to marry and establish a family is listed in Article 16 paragraph 2 of the Universal Declaration of Human Rights affirms the right to family unity as a basic principle by recognizing that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state”.

Article 17 ICCPR prohibits arbitrary and unlawful interference or interference with a family. These rights are also reaffirmed in the Arab Charter on Human Rights in article 33 paragraph 2 states that “The State and Society provide for protection of the family and its members, for the strengthening of its bonds. All forms of violence and abusive treatment in the relation between family members, especially towards women and children, shall be prohibited”.

Because the family is a natural and fundamental unit in society, the State and society are obliged to provide family and member protection to strengthen their ties. All forms of violence and abuse in relationships between family members, especially women and children, must be prohibited. The state and society promise to provide special treatment and protection for mothers, children, and parents.

Furthermore Article 33 paragraph 3 states that: “The State Parties shall take all appropriate legislative, administrative and judicial provisions to ensure the protection, survival and well-being of children in an atmosphere of freedom and dignity”.

As a basic unit of society, the family has the right to be respected and protected. The right to family unity is inherent in recognizing the family as a 'group' unit: if family members do not have the right to live together, there will be no 'group' to be respected or protected.<sup>4</sup> Based on the principle that the family is a

<sup>1</sup> OHCHR. 2017. “OHCHR Technical Mission to the State of Qatar, 17-24 November Report on Impact of the Gulf Crisis on Human Rights December 2017”, p. 14. Available at <http://nhrc-qa.org/wp-content/uploads/2018/01/OHCHR-TM-REPORT-ENGLISH.pdf>

<sup>2</sup> OHCHR. *Ibid.*, p. 15

<sup>3</sup> Amnesty International, 2017, Public Statement “Gulf dispute: Six months on, individuals still bear brunt of political crisis” Available at <https://www.amnesty.org/download/Documents/MDE2276042017ENGLISH.pdf>

<sup>4</sup> K. Jastramand K. Newland, 2003 “Family Unity and Refugee Protection”, in Refugee Protection in International Law: UNHCR's Global Consultation on International Protection. Cambridge University Press (CUP), p. 555 Available at <http://www.refworld.org/docid/470a33be0.html>.

fundamental unity in society and the obligation of the state to provide protection and support for unity,<sup>1</sup> the duty of the United Arab Emirates is not only to refrain from actions that would result in the separation of the family, but also that they take steps to maintain family unity and reunite family members who have been separated.

With the separation of the family, intervening against the family, and also cannot reunite the families that have been separated which impacted after the blockade and the termination of diplomatic relations. Therefore, the rarity taken by the United Arab Emirates government violates the right to family life contained in various international instruments, especially the right to family unity and the right to family reunification.

### **Separation of Family as a violation of children's rights and the principle of the best interests of the child.**

International law, in particular the Convention on the Rights of the Child requires states parties to respect and guarantee the rights of children who are within their jurisdiction stated in this convention without any discrimination, regardless of race, color, sex, language, religion, political opinions or other opinions, nationality, ethnicity, or social origin, wealth, disability, birth or other status of the child or parent of the child or legal guardian of the child.<sup>2</sup> This can be seen in article 2 paragraph (1) which states that:

*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

In accordance with Article 2 (1) So when the policies adopted by the United Arab Emirates after the blockade and termination of diplomatic relations are related to the fate of children affected by family segregation only on the basis that their parents are inconsistent Qatar in the United Arab Emirates with the provisions of the Convention on the Rights of the Child, the United Arab Emirates has violated its agreements under international law.

The Convention on the Rights of the Child<sup>1989</sup> also mandated States to use the “best interests of the child” standard in making any policies relating to children. The CRC specifically addresses the rights of children to remain with parents and their families. This can be seen in Article 8 of the CRC regarding the right to family relations without interference, which states that:

- (1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
- (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9 (1) specifically prohibits the separation of parents from children except in limited circumstances (if necessary to ensure the best interests of children)<sup>3</sup> and Article 9 (3) CRC requires States to allow children to maintain direct contact and contact with both of their parents routinely during separation.<sup>4</sup>

Based on the foregoing, the steps and policies of the United Arab Emirates state contradict the provisions regarding the rights of children under Articles 8 and 9 of the Convention on the Rights of the Child. Because family separation that occurred after the blockade and the termination of diplomatic relations by the United Arab Emirates is a form of government intervention<sup>5</sup> that disrupts family relations. This policy also

<sup>1</sup> Ryan Mrazik & Andrew I. Schoenholtz. 2010. “Protecting and Promoting the Human Right to Respect for Family Life: Treaty-Based Reform and Domestic Advocacy.” Georgetown University Law Center, p. 653

<sup>2</sup> See at Article 2 Paragraph (1) Convention on the Rights of the Child 1990 (CRC): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. See at Article 2 Paragraph (2) Convention on the Rights of the Child 1990 (CRC): States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

<sup>3</sup> States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

<sup>4</sup> States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

<sup>5</sup> The intervention, although it can be run at any time in the stage of development of disputes between countries, usually run at a time when between the parties to the dispute will erupt the war. Kadarudin, Syria Conflict and Other State Intervention:

means that the United Arab Emirates has taken steps that are not in line with the provisions in which children should not be separated from their parents by force except in the best interests of the child and also the provisions that children have the right to be cared for by their parents. Moreover, although children have the right to maintain communication with their parents when separated, there are many cases where parents and children cannot communicate with each other. Parents have no information about the whereabouts of their children, so this causes suffering for the family.<sup>1</sup>

When countries have ratified the Convention on the Rights of the Child 1989, they agree to protect children in their territories and under their jurisdiction, by the provisions of this instrument. States have also agreed to extend relevant rights to children by international human rights obligations. As a state party to the Convention on the Rights of the Child, the United Arab Emirates should respect and fulfill the rights of children which is realized in the laws and policies of their country.

Separation of children is not only out of district with the objects and objectives of the CRC, but rather has consequences for the safety, health, and development of children.<sup>2</sup> When policies related to children's rights after the blockade and the termination of the United Arab Emirates' diplomatic relationship are inconsistent with the provisions of the 1987 Convention on the Rights of the Child, the United Arab Emirates has violated its treaty obligations under international law.

The principle of the best interests of children is the principle of overall human rights that must be respected in all respects including those related to the child's right to family life. Therefore, the policy adopted by the United Arab Emirates which after the blockade and termination of diplomatic relations is forced evictions that have impacted on the existence of family separation which is contrary to the best interests of the child to remain together with his family.

### **Human Rights and International Obligations of the State**

The structure of the international community consists of subjects of international law that are legally formally equivalent. The absence of a supra-national body means that there is nobody that has the authority to create, implement and enforce international law.<sup>3</sup> When viewed under international law, every country does have sovereignty. With sovereignty, the state has several authorities to take various actions.<sup>4</sup> However, in the sovereignty contained an obligation not to misuse the sovereignty. Misuse of sovereignty in the form of international wrong is an act that violates international law and this can lead to state responsibility.<sup>5</sup>

As a sovereign country, the United Arab Emirates can determine the laws and policies in its country, the United Arab Emirates also has the right to control the entry of foreigners into its territory, or move and deport foreigners who are in their country, but in doing so, they are bound by obligations they are based on international law especially with regard to human rights.

This is also by the theory of state sovereignty which continues to develop from the absolute concept of freedom and freedom without limits to a relative concept in which state freedom and independence is limited both by the freedom of other countries and by international law.<sup>6</sup> This sovereignty is limited by equal freedom and independence from other countries as well as by international conventions and special agreements made by the state. The United Arab Emirates as a sovereign nation has recognized the need to respect certain obligations and rights if it wants to maintain its position among the community of nations. The United Arab Emirates has chosen to participate in the international legal system and enter into agreements with other sovereign states. As such it has agreed to be bound by an international scheme of rights and responsibilities governing the way the

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Where is International Law?, Jurnal Ilmu Hukum "THE JURIS" Vol. I, No. 1, June 2017 Edition, p. 9, Available at <http://ejournal.stih-awanglong.ac.id/index.php/juris/article/view/22/8>

<sup>1</sup> OHCHR. 2018. UN experts to US: "Release migrant children from detention and stop using them to deter irregular migration". Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E>

<sup>2</sup> Young Center for Immigrant Children's Rights. 2018 "More Than 200 Experts in Child Welfare, Juvenile Justice Oppose Government Plans to Take Children From Parents at Border". Available at <https://www.theyoungcenter.org/stories/2018/1/16/experts-oppose-plans-to-take-children-from-parents-at-border>

<sup>3</sup> S.M. Noor, et al., 2016. "Hukum Diplomati dan Hubungan Internasional (Diplomatic Law and International Relations)". Pustaka Pena Press. Makassar, p. 223

<sup>4</sup> The measure is: "... Lawful control over its own territory to the exclusion of all other states, possesses authority to govern in its own territory, and has the exclusive right to establish and apply the law internally." (H Victor Conde. 1999. "A handbook of International Human Rights Terminology") See at Rhona K.M. Smith. 2008. "Hukum Hak Asasi Manusia (Human Rights Law)" PUSHAM UII, Yogyakarta, p. 74

<sup>5</sup> *Ibid.*, p. 75

<sup>6</sup> Ahmed Sayed, Jamsheed. 2018. "The Evolution of State Sovereignty: A historical overview" International Journal of Humanities and Social Science Invention. Vol. 6 No. 8 Available at [http://www.ijhssi.org/papers/v6\(8\)/Version-3/B060830812.pdf](http://www.ijhssi.org/papers/v6(8)/Version-3/B060830812.pdf)

state acts sovereignty. In the efforts of the United Arab Emirates in implementing its policies, the United Arab Emirates must respect their obligations to human rights under international law.

Asborn Eide, states there are three State obligations, namely obligation to respect, protect and fulfill, and add obligation to facilitate. In a different formulation, G.J H Van Hoof stated four State obligations namely obligations to 1) respect rights of others 2) to protect, 3) to ensure and 4) to promote.<sup>1</sup> Wenche Barth Eide and Uwe Kracht explain that The ultimate responsibility for the realization of human rights with states parties to the various treaties. This responsibility must not be misinterpreted as a straightforward welfare function on the state vis a vis the citizens its jurisdiction.<sup>2</sup>

The theory of international obligations is based on acts of states, on some form of national will, as stated (almost) exclusively in conventional sources and international customs.<sup>3</sup> Related to international law enforcement, the obligations imposed on legal subjects including one of the countries are related to moral obligations. Countries with good intentions carry out all the provisions of international law both arising from international treaties, customary international law, general legal principles or other international legal methods agreed to by the international community.

#### IV. Conclusion

The measure taken by the United Arab Emirates government after the blockade and termination of diplomatic relations have resulted in the forced eviction of all citizens of Qatar. The impact of this action has caused and led to cases of temporary family separation or even having the potential to occur in the long term. This action can be interpreted as the failure of the United Arab Emirates to fulfill the human rights of citizens in its territory. This action has violated various international human rights aspects such as, children's rights, the right to family life. As a sovereign country, the United Arab Emirates has the right to determine each of its policies, but at the same time the United Arab Emirates also has international obligations. The United Arab Emirates has agreed to abide by the provisions of the 2004 Arab Charter of Human Rights, the Convention on the Rights of the Child and also a member of the United Nations. So, the United Arab Emirates are bound to Universal Declaration of Human Rights that generally accepted and recognized as International Customary Law which makes the United Arab Emirates bound to international obligations, namely to respect; to fulfill; and to protect human rights.

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<sup>2</sup> Wenche Barth Eide & Uwe Kracht (eds), 2005, *Food and Human Rights in Development, Volume 1, Legal institution Dimensions and Selected topic*, Intersentia, Oxford. See at Iin Karita Sakharina, *Op.Cit.*, p. 47

<sup>3</sup> Fernando R. Teson, 1990 "International Obligation and the Theory of Hypothetical Consent" *Yale Journal of International Law*. Vol. 15 No. 1, p. 94 Available at <http://digitalcommons.law.yale.edu/yjil/vol15/iss1/3>

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