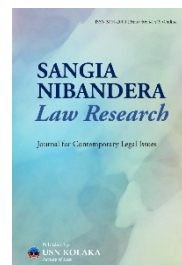


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State Responsibility for Human Rights Violations in the Rohingya Crisis under International Law

Tanggung Jawab Negara atas Pelanggaran Hak Asasi Manusia dalam Krisis Rohingya di bawah Hukum Internasional

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Abstract

Public international law, commonly known as the law of nations, is a legal framework that emphasizes the relationships between states. It acts as a set of rules applicable in the international context. In this domain, there exist global relations among states, as well as disputes that can disturb the interactions between the involved nations and impact international relations overall. This is particularly evident in the case of human rights violations against the Rohingya ethnic group in Myanmar. The Rohingya, who have lived in Myanmar for many years, are not recognized as citizens by the Myanmar government. The numerous human rights abuses occurring are in clear violation of fundamental principles of international law. The aim of this research is to

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explain and analyze international human rights regulations concerning the protection of the Rohingya, while also identifying the various obstacles in efforts to provide protection and resolve the human rights violations that have occurred. This study employs a normative legal methodology through legislative, case, and analytical approaches. The results indicate that legal protection for the Rohingya ethnic group, as outlined in international human rights instruments, has not been achieved, mainly due to several challenges in addressing the root causes of human rights violations in Myanmar. A significant barrier is the unwillingness of the Myanmar government to address the abuses faced by the Rohingya. Given the lack of commitment from the Myanmar government to resolve this issue, the UN has condemned the situation and has sought to implement humanitarian intervention to address the serious human rights violations against the Rohingya. Thus, this paper aims to clarify the obligations that the Myanmar government should fulfill in safeguarding human rights and to identify the obstacles that hinder the resolution of human rights violations against the Rohingya.

Keywords

Public International Law, Human Rights Violations, Ethnic Rohingya Protection

Abstrak

Hukum internasional publik, yang sering disebut sebagai hukum bangsa-bangsa, adalah sistem hukum yang mengutamakan hubungan antara negara-negara. Hukum internasional berfungsi sebagai aturan yang berlaku di dunia internasional. Dalam hukum internasional, terdapat hubungan antarnegara yang bersifat global, dan terjadi perselisihan antarnegara. Perselisihan internasional tersebut dapat mengganggu hubungan antarnegara yang terlibat maupun mempengaruhi hubungan internasional. Seperti halnya dengan perselisihan internasional terkait pelanggaran HAM etnis Rohingya di Myanmar. Etnis Rohingya yang telah lama menetap di Myanmar tidak diakui sebagai warga negara oleh pemerintah Myanmar. Berbagai pelanggaran HAM yang terjadi jelas melanggar prinsip

dasar hukum internasional. Penelitian ini bertujuan untuk menjelaskan dan menganalisis peraturan HAM internasional yang berkaitan dengan perlindungan etnis Rohingya, serta mengidentifikasi berbagai rintangan dalam upaya menyediakan perlindungan dan solusi menyelesaikan pelanggaran HAM yang terjadi. Penelitian ini menggunakan metode hukum normatif melalui pendekatan peraturan perundang-undangan, pendekatan kasus, dan pendekatan analisis. Penelitian menunjukkan bahwa perlindungan hukum terhadap kelompok etnis Rohingya, sebagaimana dituangkan dalam instrumen hak asasi manusia internasional, belum terpenuhi, terutama karena berbagai kendala dalam mengatasi akar penyebab pelanggaran hak asasi manusia di Myanmar. Beberapa di antaranya adalah ketidakbersediaan pemerintah Myanmar untuk menangani kasus pelanggaran HAM yang dialami oleh etnis Rohingya. Mengingat kurangnya niat dari pemerintah Myanmar untuk menangani masalah ini, PBB mengecam situasi tersebut dan berusaha melakukan intervensi kemanusiaan guna menangani pelanggaran HAM yang serius terhadap etnis Rohingya. Oleh karena itu, tulisan ini bertujuan untuk menjelaskan kewajiban yang sebaiknya diimban oleh pemerintahan Myanmar dalam usaha pengamanan berdasarkan HAM internasional, juga mengidentifikasi hambatan-hambatan yang menghalangi penyelesaian kasus pelanggaran HAM terhadap etnis Rohingya.

Kata Kunci

Hukum Internasional Publik, Pelanggaran HAM, Perlindungan Etnis Rohingya

A. Introduction

Public international law is a set of legal norms and principles that govern relationships or issues involving more than one country (international relations) and are not civil in nature.¹ Public international law, also known as the law of nations, is a legal system that focuses on interweaving between nations. Although the term "public international law" is often

¹ Shaw, Malcolm N. *International Law*. (Cambridge, MA: Cambridge University Press, 2017).

abbreviated to "international law," which can lead to confusion with international civil law, the term has been widely accepted. The designation "*public international law*" is used to distinguish it from international civil law. International law includes legal entities such as states, international organizations, and the International Red Cross, as well as parties involved in armed conflict, including individuals who commit international crimes. This legal source refers to Article 38 (1) of the Statute of the International Court of Justice.² In this context, international law includes not only treaties and conventions governing diplomatic, trade and security relations, but also norms related to the protection of human rights.

The most important legal subject is each country, which also serves as the subject of international law. The most important provisions for the establishment of a sovereign and independent state include the existence of areas with clear boundaries and full support from the population to run the government. The legitimate presence of the government allows the country to establish significant relations with other subjects of international law. In addition to being its own subject, the state has a responsibility to uphold human rights in its territory. They are mandated to protect these rights at the international level in accordance with established human rights instruments. In the context of human rights, it is clearly stated that the state plays a role as an entity that has the capacity to implement human rights for a person under its power, or in other words, for its citizens.³

The state plays the role of the responsible party for human rights (duty bearer) for every individual under its authority and legally has responsibility as a right holder. The state has a duty to respect, fulfill, and protect the human rights of every

² Article 38 paragraph (1) of the Statute of the International Court of Justice.

³ Silitonga, Tatar Bonar. "Tantangan Globalisasi, Peran Negara, dan Implikasinya Terhadap Aktualisasi Nilai-Nilai Ideologi Negara." *Jurnal Civics: Media Kajian Kewarganegaraan* 17, no. 1 (2020): 15-28; Setiyani, Setiyani, and Joko Setiyono. "Penerapan Prinsip Pertanggungjawaban Negara Terhadap Kasus Pelanggaran HAM Etnis Rohingya di Myanmar." *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 261-274; Utami, Mumpuni Tri. "The Implementation of Non-Refoulement Principle in Case of Rohingnya." *The Digest: Journal of Jurisprudence and Legisprudence* 1, no. 2 (2020): 197-222.

individual. If the state as the person in charge of human rights (HAM) fails to carry out these obligations, then the state can be considered negligent or with the intention of carrying out acts against international law related to human rights. When a country violates human rights, this will automatically give rise to state responsibility. The state will be held accountable for human rights acts experienced by individuals or groups. This responsibility arises because the state, which should be able to respect, fulfill, and provide protection of the human rights of its citizens, actually carries out its actions or cannot carry out its obligations in the application of human rights.

In the draft Law Commission's Articles, the different dimensions of state responsibility for human rights violations are outlined including: a) stopping violence (termination), b) ensuring that the same act is not repeated (non-repetition), and c) providing reparations, which may involve restitution, compensation, or a combination of both. In summary, if a country, such as Myanmar, violates its international obligations, it will be held responsible for the violation and must fulfill its responsibilities accordingly. Human rights are given by the creator, namely God Almighty, and are rights that must be respected by everyone as God's creation that has high value and honor. Human Rights are essential for every individual, apply universally, and cannot be taken away by anyone. These rights are essential to maintain human honor and become the moral foundation in human interactions.⁴

These rights include the essential rights that everyone has, including the right to live within a variety of political, legal, economic, social, and cultural frameworks. These inherent rights of all people, regardless of race, religion, or nationality⁵, have a central role in international law. Not forgetting ethnic and religious differences is the reason for people to respect each other.

The concept of Human Rights emerged as a response to the violation of basic rights that occurred during conflicts and authoritarian regimes in various parts of the world. Various

⁴ Midriyan, Arzaina, et al. "Penegakan Hukum Hak Asasi Manusia di Indonesia." *Karimah Tauhid* 2, no. 1 (2023): 249-255.

⁵ Article 2 Universal Declaration of Human Rights 1948 (UDHR).

international instruments, such as the Universal Declaration of Human Rights (1948)⁶ and various other conventions, have been established to protect these rights and make them global standards. The integration between public international law and human rights marks an important development in the understanding of human dignity in a global context. With increasing attention to human rights issues, both at the domestic and international levels, public international law plays a role in creating the necessary mechanisms to uphold justice and protection for marginalized individuals and groups. In this era of globalization, new challenges have emerged, such as migration, climate change, and armed conflict, which require international law and human rights protection to support each other in achieving the goal of a more just and peaceful world. Throughout the evolution of human rights, the three fundamental aspects of human existence that must be protected are integrity, freedom, and equality, all three of which require respect for the dignity and dignity of every human being.⁷

However, given the existence of ethnic minorities who are considered non-dominant and have certain national, ethnic, religious, or linguistic characteristics that are different from the majority ethnic group, equality is often difficult to achieve in certain countries. Causing ethnic minorities to face discrimination. History records various human rights abuses that occur due to unfair and discriminatory treatment based on ethnicity, race, skin color, culture, language, religion, group, gender, social status, politics, descent, and other factors. This misappropriation can occur in a straight line (between communities) or vertically (between the state and the people) or vice versa. Many of them fall into the category of gross human rights violations.⁸

⁶ *Everyone has the right to life, liberty and security as an individual. No one should be enslaved or enslaved; Slavery and the slave trade of any kind must be prohibited.*

⁷ Kasim, Ifdhal, and Johanes da Masenus Arus (eds). *Hak Ekonomi, Sosial dan Budaya (Esai-Esai Pilihan Buku 2: Budaya)*. (Jakarta: eLSAM, 2001).

⁸ Arianta, Ketut, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini. "Perlindungan Hukum Bagi Kaum Etnis Rohingya dalam Perspektif Hak Asasi Manusia Internasional." *Jurnal Komunitas Yustisia* 3, no. 2 (2020): 166-176; Ali, Zezen Zainul, et al. "Navigating Social Piety and State Stability

Countries in the Southeast Asian region (ASEAN) have ethnic, racial, and religious diversity spread across each country. Myanmar is a member of Southeast Asia (ASEAN), a country that was once a British colony and gained its independence on January 4, 1948 with a population of more than 50 million people. Most of the population is Buddhist and consists of various ethnic groups. Myanmar's population includes about 135 ethnic groups and subgroups. The largest ethnic group in Myanmar is the Burmese ethnic group, comprising about 68% of the population, followed by the Shan (9%), Karen (7%), Rakhine or Arakan (4%), and Mon (2%). In addition, there are also Kachin, Chin, Karenni, and Rohingya ethnicities. Myanmar's ethnic diversity has led to conflicts between majority and minority groups, one of which is a dispute over the Rohingya tribe. The Rohingya, a Muslim and minority group, have long been involved in conflicts in the region. Since independence in 1948, political and social life in Burma has continued to experience various turmoils. The Rohingya ethnic problem continues and remains an unresolved issue in Myanmar until now.

The reports of the massacre of Rohingya Muslims in October 2016 shocked the public both regionally and internationally. In this era of openness, where press freedom is highly upheld, there have been allegations of serious human rights abuses in Myanmar—located in the west, bordering Bangladesh and India. These allegations have led to mass exodus, with thousands of Rohingya fleeing to countries such as Indonesia, Malaysia, Thailand, and India. In 2012 it was estimated by the United Nations High Commissioner for Refugees (UNHCR) that at least 150,000 people had left Myanmar for Bangladesh and India. This crisis began with the Rohingya Eradication Movement in 2012 which sought to eliminate the Rohingya ethnic group from the Arakan region. As a result, tens of thousands of people were forced into concentration camps, and many others lost their lives.

The country, which was once a British colony and gained its independence on January 4, 1948, has a population of more than 50 million people. Most of the inhabitants of this Mongol race

in Indonesia's Response to the Rohingya Refugee Crisis." *Human Rights in the Global South (HRGS)* 3, no. 2 (2024): 189-208.

were devout Buddhists. Since independence in 1948, political and social life in Burma has continued to face various challenges and conflicts. There were a number of notable political upheavals after Myanmar's independence in 1948. A page presents a timeline of events involving the Rohingya community. Here is a chronological summary of events related to the Rohingya:

- 1) In 1978, Operation King Dragon was carried out which aimed to intimidate and force the Rohingya out of the Arakan region.
- 2) In 1982, the Rohingya were not recognized as one of the 135 official ethnic groups in Myanmar, so they lost their citizenship status.
- 3) In 1990, Rohingya refugees who fled to Bangladesh due to the ongoing conflict were forced to return to Myanmar. This situation was further exacerbated by the destruction of mosques and schools in 2001.
- 4) There is an extremist group 969 that masterminds the Rohingya Elimination movement, which aims to erase the existence of the Rohingya. As a result, an estimated 140,000 people had to live in concentration camps, which resulted in about 200 deaths.
- 5) A large number of Rohingya make the perilous journey by boat to escape to Indonesia, Malaysia, and Thailand. Many floated in the sea, resulting in many casualties during the voyage. UNHCR estimates that between January 2012 and 2015, at least 150,000 people fled the Myanmar-Bangladesh border.
- 6) In October 2016, there was a massacre of Rohingya Muslims that killed 150 people and burned three villages.
- 7) Although there is no definitive data on the number of victims, the time and location of human rights violations against the Rohingya community, some information can be ascertained to be true. In a report released by Human Rights Watch and reported by the BBC, it was stated that more than 1,200 shelters in villages inhabited by Rohingya Muslims in Myanmar had been destroyed over the past six weeks (between October and November 2016). In addition, the

news also included satellite photos showing buildings that had been destroyed.⁹

With the enactment of the Burma Citizenship Law 1982, Myanmar excluded the Rohingya from the list of eight major ethnic groups and 135 other recognized ethnicities, as it viewed them as illegal immigrants from Bangladesh. This policy clearly has had a bad impact on the Rohingya community in Myanmar, especially since Bangladesh also does not recognize them as citizens. Discrimination against the Rohingya has been going on since 1962.

Under the leadership of President U Nay Win, a series of operations were carried out that resulted in the forced expulsion of the Rohingya ethnic group from Myanmar. These acts include extrajudicial killings, arbitrary arrests, confiscation of property, sexual violence, anti-Rohingya and anti-Muslim propaganda, forced labor, restrictions on movement, restrictions on work, and bans on worship. The actions led to many deaths among the ethnic Rohingya, forcing them to flee to seek asylum in neighboring countries¹⁰. However, some of the remaining ethnic groups in Myanmar's Rakhine State are unable to access humanitarian aid due to the strict military security measures imposed by Myanmar's armed forces. This action has certainly attracted international attention, as this gross violation of human rights poses a major problem that not only impacts the people of Myanmar, but also negatively affects other countries. Therefore, it is important to provide legal protection for the Rohingya ethnic group in Myanmar. Based on this context, the author aims to investigate the types of international human rights protections that should be provided to the Rohingya, as well as the challenges that hinder the resolution of cases of human rights violations against them.

⁹ Franciska, Christine. "Foto-foto 'penyiksaan kaum Rohingya': yang palsu dan yang asli", *BBC Indonesia*, November 23, 2016. Retrieved from <http://www.bbc.com/indonesia/trensosial-38074272>

¹⁰ Mangku, Dewa Gede Sudika. "Pemenuhan Hak Asasi Manusia kepada Etnis Rohingya di Myanmar." *Perspektif Hukum* 3, no. 1 (2021): 1-15; Rasyid, Sulaiman, et al. "The Role of Indonesian Diplomacy in Managing the Conflict between The Myanmar Government and The Rohingya Muslim Ethnic." *Unnes Law Journal* 8, no. 1 (2022): 159-178.

B. Method

The method used in this study applies normative legal methods with three different approaches, namely the legislative approach, the case approach, and the analysis approach. Referring to this approach, the author will analyze the UDHR as well as the Convention on the Prevention and Eradication of the Crime of Genocide, along with other legal instruments at both the national and international levels. In addition, the author will also analyze the existing obstacles as legal protection measures for the Rohingya. The various legal materials used in the study used primary data, namely authoritative sources such as laws and regulations and judges' decisions (jurisprudence).¹¹ Secondary data includes legal publications that do not include official documents such as books, legal dictionaries, journals, and online websites. This data is then processed and analyzed by descriptive methods.

C. Results and Discussion

1. Legal Protection for Rohingya Ethnic Groups in Line with International Human Rights Standards

Human rights are rights that are inherent in every individual since human beings are in the womb. Human rights are universal rights that must be respected by everyone to each other. Every human being has very important rights, so human rights should not be taken away or reduced in their implementation. In addition, human rights apply regardless of status, ethnicity, religion, race, gender, or political views. Human rights should also not be violated; No individual or group has the power to restrict or violate the human rights of another person or group.

Gross violations of human rights have violated international obligations, given that human rights arrangements

¹¹ Mangku, "Pemenuhan Hak Asasi Manusia kepada Etnis Rohingya di Myanmar"; Rasyid, et al. "The Role of Indonesian Diplomacy in Managing the Conflict between The Myanmar Government and The Rohingya Muslim Ethnic."

apply to all countries¹². Thus, any violation falls under a global obligation that can create an obligation for the state. Human rights violations often occur due to the abuse of power and the negligence of the state in fulfilling its obligations. Therefore, human rights violations can manifest themselves in two forms: through the state's inaction to take action (violations due to negligence) and through active actions taken by the state (violations due to actions). A significant factor contributing to the Myanmar government's human rights abuses against the Rohingya community was the emergence of the Rohingya Eradication Movement in 2012 which sought to eradicate the Rohingya in the Arakan region.¹³

On December 9, 1948, the United Nations in its session produced an agreement on the classification of gross violations of human rights and violations of international law which also affirmed in the Convention on the Prevention and Punishment of the Crime of Genocide that can occur due to the cleansing of an entity, such as ethnicity, group, class, or nation.

In the enactment of the Citizenship Law of 1962, the Myanmar government committed violations and crimes against the Rohingya ethnic group. The Myanmar government removed the Rohingya group's citizenship status, which caused the Rohingya to lose protection and rights from the Myanmar government. Discrimination also affects the Rohingya group, which includes limited rights in marriage and childbearing, limited birth rates, and also not obtaining birth certificates for newborn Rohingya descendants. In addition, the destruction of school buildings and places of worship, both prayer rooms and mosques. Another discrimination that befalls the Rohingya is not only the right to life, but also includes discrimination in the social sphere, including the loss of the right to get a job that causes

¹² Itasari, Endah Rantau. "Memaksimalkan Peran Treaty of Amity and Cooperation in Southeast Asia 1976 (TAC) dalam Penyelesaian Sengketa di ASEAN." *Jurnal Komunikasi Hukum (JKH)* 1, no. 1 (2015): 14-23.

¹³ Setiyani, Setiyani, and Joko Setiyono. "Penerapan Prinsip Pertanggungjawaban Negara Terhadap Kasus Pelanggaran HAM Etnis Rohingya di Myanmar." *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 261-274; Utami, Mumpuni Tri. "The Implementation of Non-Refoulement Principle in Case of Rohingya." *The Digest: Journal of Jurisprudence and Legisprudence* 1, no. 2 (2020): 197-222.

economic restrictions, in addition to the lack of guaranteed health and education obtained by the Rohingya.

Crimes against humanity that declare that widespread and systematic attacks on civilian populations, such as murder, extermination, slavery, and forced displacement, can be considered crimes contained in Article 7 of the 1998 Rome Statute, which remedy crimes against humanity, are declared to be widespread and systematic attacks. Furthermore, destruction refers to actions carried out intentionally to eliminate access to food and health (including access to medicines), which can result in the destruction of the life of a group contained in Article 7 paragraph 2. Human rights violations in the Rohingya case come in many identifiable forms.¹⁴

The categorization of crimes against humanity according to article 7 of the 1998 Rome Statute is a violation that has been committed by Myanmar, where on February 3, 2017 the United Nations Human Rights Flash Report compiled a report that found that the implementation of the law was open without going through court procedures. There were a range of crimes, including indiscriminate shootings, mass murders, kidnappings, and detentions without clear evidence, as well as sexual violence such as rape recorded in the report. Furthermore, there is also physical violence such as persecution, beatings, and cruel torture. There are indications that Myanmar is committing human rights violations against the Rohingya tribe, which is a crime against humanity which is in accordance with Article 7 of the 1998 Rome Statute.¹⁵

The need for accountability without distinction between ethnicity, religion, race, gender, or language is evidence of the

¹⁴ Putra, Ketut Alit, Ni Putu Rai Yuliantini, and Dewa Gede Sudika Mangku. "Analisis Tindak Kejahatan Genosida oleh Myanmar Kepada Etnis Rohingnya Ditinjau dari Perspektif Hukum Pidana Internasional." *Jurnal Komunitas Yustisia* 1, no. 1 (2018): 66-76.

¹⁵ Utama, I. Gede Angga Adi, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini. "Yurisdiksi International Criminal Court (ICC) Dalam Penyelesaian Kasus Rohingnya dalam Perspektif Hukum Internasional." *Jurnal Komunitas Yustisia* 3, no. 3 (2020): 208-219; Gunawan, Yordan, Carissa Shifa Novendra, and Aldha Febrila. "Indonesia's Responsibility Towards Rohingya Refugees: Analysis of the 1951 Refugee Convention." *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 182-194.

failure to promote and encourage universal respect and respect for human rights as acts of human rights abuses. The Convention against torture and cruel, inhuman treatment and punishment is contained in article 4 paragraph 1.

The Immigration Law of 1974 and the Citizenship Law of 1982, which were removed from the policies of the Myanmar government, are contrary to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965. The formulation of the law aims to revoke the Rohingya citizenship. UDHR Article 15 paragraph 1 states that everyone has the right to citizenship. So against this policy, Myanmar's membership in the United Nations since 1948 has made Myanmar have legal consequences, because in UN membership there is an obligation to comply with all the provisions of the UN charter.¹⁶

As a source of international law, there is an obligation to comply with international conventions that have been established through Article 38 paragraph 1 of the Statute of the International Court of Justice (ICJ). Furthermore, the Rohingya have settled in Myanmar since the 7th century. In 1748, an Islamic sultanate located in Arakan ruled the region for about 350 years. The decision to revoke their citizenship has triggered a significant international reaction, as it goes against the Convention on Civil Rights, which protects the right to stay or leave a country (ICCSR 1960). This issue is particularly relevant to Article 33(1), which deals with forced evictions or repatriations, and this is contrary to the principles set out in the International Declaration of Human Rights, in particular in Articles 13, 14, and 15 of the UDHR, which affirm the rights of individuals. obtain citizenship and protection from persecution.¹⁷

¹⁶ Putra, Ketut Alit, Ni Putu Rai Yuliantini, and Dewa Gede Sudika Mangku. "Analisis Tindak Kejahatan Genosida oleh Myanmar Kepada Etnis Rohingnya Ditinjau dari Perspektif Hukum Pidana Internasional." *Jurnal Komunitas Yustisia* 1, no. 1 (2018): 66-76.

¹⁷ Mangku, Dewa Gede Sudika. "Pemenuhan Hak Asasi Manusia kepada Etnis Rohingnya di Myanmar." *Perspektif Hukum* 21, no. 1 (2021): 1-15.; Muttaqin, Entol Zaenal. "Indonesia's Protection of Rohingya Refugees and Regional Geopolitical Principles." *Lampung Journal of International Law* 6, no. 1 (2024): 41-54.

A stateless person does not receive legal protection from any country and cannot enjoy the basic rights associated with citizenship. In relation to violations of international law, Myanmar has met two important criteria for international wrongdoing: there is a violation of international obligations, and these violations can be attributed to Myanmar. Consequently, Myanmar must face adverse repercussions for immediately halting the denial of citizenship to the Rohingya community and granting them citizenship status.

In addition, the Rohingya community is prohibited from practicing their religion freely. In early June 2012, almost all mosques in Sittwe/Akyab, the capital of Arakan, were destroyed or burned, and many mosques and madrassas in Maungdaw and Akyab were closed, preventing Muslims from worshipping there. Any violations that occur will be subject to sanctions. This prohibition of worship is clearly against Article 18 of the DUHAM which states that everyone has the right to freedom of worship. Further, this act is also contrary to the 1992 Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minority Groups, which emphasizes the state's responsibility to protect the existence and symbols of the state, ethnic, cultural, religious, and minority rights of its communities.¹⁸

These rights include the freedom to profess and practice one's religion. Furthermore, Article 2 paragraph 5 affirms the right to establish and maintain peaceful relations across borders with members of one's own group, as well as with individuals from other minority groups who have the same religious relationship. In 2017, violence directed at the Rohingya ethnic group in Myanmar continued and resulted in many casualties. In one week, about 400 people were reported to have died. By the end of that month, the number of Rohingya refugees fleeing from August to September had jumped to 123,000. In 2017, the number of refugees from Myanmar increased dramatically

¹⁸ Arianta, Ketut, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini. "Perlindungan Hukum Bagi Kaum Etnis Rohingya dalam Perspektif Hak Asasi Manusia Internasional." *Jurnal Komunitas Yustisia* 3, no. 2 (2020): 166-176.; Ali, Zezen Zainul, et al. "Navigating Social Piety and State Stability in Indonesia's Response to the Rohingya Refugee Crisis." *Human Rights in the Global South (HRGS)* 3, no. 2 (2024): 189-208.

compared to previous years, which amounted to 1,156,732 people.

Rohingya refugees who cross national borders to seek safety in other countries are entitled to international protection. Therefore, it is the responsibility of other countries to provide this protection in accordance with the provisions of the 1954 Convention on the Status of Stateless Persons.¹⁹ The convention stipulates that stateless individuals have the right to protect their basic rights and freedoms without facing discrimination. In addition, this agreement guarantees certain rights not covered by other conventions, including the right to administrative assistance, the right to personal identity, and the right to obtain travel documents.²⁰

The Myanmar government is required to conduct a transparent investigation into the matter, ensuring that individuals found guilty of serious human rights violations are properly prosecuted and punished. In addition, the government must take remedial measures, which may include providing compensation, restitution, or rehabilitation to benefit the victims. However, the Myanmar government has not taken significant steps to overcome the existing problems, resulting in the situation continuing. Myint Swe, in his role as Chairman of the Rakhine State Investigative Committee and Vice President, even claimed there was no evidence of violence or indications of genocide or plans for mass killings against the Rohingya. Nevertheless, prosecutions of perpetrators, as required by international law, must continue. Myanmar's rejection of the claim results in a denial of the principle of justice.

This refusal to uphold justice is not only a significant violation of international legal standards but also creates a paradox given Myanmar's self-proclaimed status as a democratic state that upholds the rule of law and the protection of human rights. Despite numerous denials from the Myanmar government regarding the available evidence, the country cannot avoid its international responsibilities under national law. Myanmar's

¹⁹ Robertson, Geoffrey. *Crimes Against Humanity: The Struggle for Global Justice*. (London: Penguin UK, 2006).

²⁰ Thontowi, Jawahir. *Hukum Internasional Kontemporer*, (Bandung: Rafika Aditama Press, 2007).

obligations for violations of international law, such as genocide, are outlined in the Genocide Convention adopted by the UN General Assembly on December 9, 1948. The convention states that individuals proven to have committed genocide should be punished, regardless of their status as Myanmar citizens, citizens, government officials, or national leaders. If the Myanmar government continues to refuse to address this situation, the UN Security Council has the authority to intervene and seek effective measures to end this gross human rights violation.²¹

2. Legal Protection Barriers for Rohingya Ethnic Groups

The state's obligation to hold accountable those responsible for gross human rights violations is outlined in various legal instruments both at the international and regional levels. Customary international law firmly opposes any leniency for widespread and gross human rights violations. The International Law Commission emphasized that such acts constitute a violation of state obligations that are categorized as wrongful acts internationally, which include serious human rights violations, considered international ²²crimes. In addition to the 1948 Genocide Convention, Article 4 of the Convention against Torture also articulates the responsibility of states to hold accountable those guilty of serious human rights violations, including crimes against humanity. Furthermore, Article 6 of the Rome Statute of 1998 characterizes genocide as a crime committed systematically aimed at destroying or exterminating, in whole or in part, a group of nations, ethnicities, races, or religions. Acts that are classified as genocide include:

- a) The act of killing a member of a group.
- b) Causing severe physical or mental harm to group members

²¹ Kurniawan, Nalom. "Kasus Rohingya dan Tanggung Jawab Negara dalam Penegakan Hak Asasi Manusia." *Jurnal Konstitusi* 14, no. 4 (2017): 880-905.

²² Roht-Arriaza, Naomi. "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law." *California Law Review* 78 no. 2 (1990): 449-513.

- c) Intentionally endangering the life of the group members and causing physical harm, either in whole or in part.
- d) Forcibly moving children from one group to another.
- e) Forced eviction or relocation of residents.

Genocide is literally defined as the deliberate killing or annihilation of a race or group. This is seen as a subcategory of crimes against humanity. Factors contributing to genocide often include racial, ethnic, and religious differences. Conflicts arising due to racial differences among various groups globally have resulted in genocide. An important example is the apartheid struggle in South Africa in the 20th century. Apartheid established a framework of racial segregation that resulted in discrimination in the political, legal, and economic spheres, effectively separating the black, mixed-race, and Indian populations from the white population in South Africa.²³

The presence of various ethnic backgrounds in a group often plays a role in the occurrence of genocide. Discrimination against groups, especially minority groups, arises not only from differences in ethnicity, religion, or economic and political conditions, but is also shaped by the social dynamics that exist in a particular society. Religious factors often play an important role in triggering genocide. Differences in religious backgrounds are often cited as the main cause of conflict and division, where groups adhering to the majority religion often oppress and oppress minority religious communities. Without initiatives to address the root of the problem, conflicts stemming from religion are likely to continue. Effective resolution of interreligious tensions requires the active involvement of religious leaders or leaders who can guide their people and encourage peaceful coexistence.

In the field of international law, the state has the main responsibility to enforce the law regarding human rights violations. These obligations are non-negotiable and cannot be

²³ See Mangku, Dewa Gede Sudika. "Pemenuhan Hak Asasi Manusia kepada Etnis Rohingya di Myanmar." *Perspektif Hukum* 21, no. 1 (2021): 1-15.; Muttaqin, Entol Zaenal. "Indonesia's Protection of Rohingya Refugees and Regional Geopolitical Principles." *Lampung Journal of International Law* 6, no. 1 (2024): 41-54; Midriyan, Arzaina, et al. "Penegakan Hukum Hak Asasi Manusia di Indonesia." *Karimah Tauhid* 2, no. 1 (2023): 249-255.

reduced or cancelled due to political, economic, or cultural factors. In his work "*De Jure Belli et Pacis*" (1625), Hugo Grotius argued that the state and its officials are responsible for crimes committed by individuals under its jurisdiction and authority. The state is obliged to ensure the fulfillment, protection, respect, and security of human rights for its citizens. Therefore, if there is a violation of human rights, the state, especially the government, can be held accountable, either by allowing the violation to occur or executing it through government policies.²⁴

From the point of view of international law, human rights violations are acts that are contrary to state obligations as defined in various international human rights treaties and instruments. Human rights violations can manifest as active actions (*actions due to commission*) or through inaction or negligence (*actions due to negligence*). The abuses faced by the Rohingya ethnic group in Myanmar clearly demonstrate the responsibility of the state. In the field of human rights, this responsibility includes the obligation to uphold, protect, fulfill, respect, and advance human rights. When violations occur within its jurisdiction, the state as the main actor must take measures to stop the violation and enforce human rights-related laws. This enforcement includes investigating, prosecuting, and sentencing activities against those found to be responsible for human rights violations.²⁵

Usually, the mechanism to hold perpetrators of crimes against humanity accountable mainly uses national courts. The settlement process often includes the establishment of a special human rights court, which can be permanent or temporary. These tribunals can be established independently by countries

²⁴ See Syofyan, Ahmad. *International Law*. (Bandar Lampung: Center for Constitutional and Legislative Studies, 2022).

²⁵ Renanda, Vella Septia, et al. "Perlindungan Hukum Terhadap Kaum Rohingya dalam Perspektif HAM dan Hukum Internasional." *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2.1 (2022): 143-152; Mahadevi, Ayisha, et al. "Implementasi Hal Asasi Manusia Internasional dalam Pemenuhan Asas Membership oleh Myanmar Kepada Etnis Rohingya." *PARAPOLITIKA: Journal of Politics and Democracy Studies* 3, no. 2 (2022): 142-157; Syofyan, Ahmad. *International Law*. (Bandar Lampung: Center for Constitutional and Legislative Studies, 2022).

involved or in partnership with international organizations such as the United Nations. In cases of gross human rights violations, the state can take several steps to fulfill its accountability. First, they must show the willingness and ability to act as a judge. In addition, the state must also uphold the principle of equality before the law to prevent impunity.

In addition, the state should set up a team to gather legal facts to address the issue before a human rights tribunal is established. Crimes prosecuted in human rights courts must be crimes recognized by international law. In addition, the countries involved are required to comply with the provisions of the UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. It is also important for the state to be committed to preventing the recurrence of gross human rights violations in the future. The rights of witnesses and victims must be safeguarded by the state, which is also obliged to comply with international provisions on the protection of human rights.

However, if a country is unable or does not have the capacity to deal with cases of serious human rights violations, the UN Security Council (UNSC) can intervene. The UNSC has the authority to make recommendations to address serious human rights violations as a way to resolve the problem. In this context, the UN Security Council can take account of human rights abuses faced by the Rohingya ethnic group and provide guidance on effective solutions to the problem.

The International Criminal Court (ICC) has jurisdiction to try individuals responsible for international crimes. Its courts concentrate on different types of offenses, including genocide, war crimes, and crimes against humanity. The ICC is equipped with the necessary legal authority and mechanisms to fulfill its objectives and responsibilities. This court may exercise its jurisdiction in both member and non-member countries. The ICC can play an active role if a country is unable or unwilling to handle cases of serious human rights violations. In other words, if a national court is deemed to have failed to adequately handle a case, the ICC has the authority to intervene and assume responsibility for resolving the matter.

The Myanmar government's unwillingness to address violence against the Rohingya ethnic group has perpetuated this

situation. According to Article 17 of the Rome Statute, the jurisdiction of the International Criminal Court (ICC) can be used in cases where there is a lack of investigation and prosecution at the national level. This includes circumstances in which the country where the perpetrator is located or where human rights violations have occurred demonstrates an unwillingness or inability to uphold justice.

Unfortunately, Article 12 paragraph 2 of the Rome Statute states that a state can only accept the jurisdiction of the Court if it has ratified the Statute. This implies that the Myanmar government may avoid accountability for its violations because it has not ratified important human rights treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the Convention on Civil and Political Rights Elimination of all forms of racial discrimination.²⁶

As a result, holding the Myanmar government accountable for their violations is a challenge because of the ratification status of international human rights treaties. However, given the deteriorating situation of the Rohingya ethnic group, which has caused many casualties, humanitarian intervention is urgently needed. There are two main conditions that underscore the importance of such interventions. First, the responsibility to protect: the large number of people who have died or gone missing, either due to deliberate acts of genocide or the government's failure to prevent violence, indicates that the state is not fulfilling its obligations to protect its citizens. This situation requires immediate action from the international community to protect the Rohingya from further human rights abuses.

Second, the large number of victims due to ethnic cleansing provides a strong reason to carry out humanitarian interventions. Acts of killing, mass expulsion, and sexual violence against the Rohingya ethnic group have led to a critical humanitarian crisis. In a context where civil society faces systematic violence and their human rights are being deprived, international intervention is essential to prevent further

²⁶ Adolf, Huala. *Hukum Penyelesaian Sengketa Internasional*. (Jakarta: Sinar Grafika, 2020).

victimization and to ensure the necessary protection.²⁷ The call for humanitarian intervention is based on Article 53 of the UN Charter, which sets out the responsibility of the UN Security Council to safeguard international security and remediation. In the case of the Rohingya, the human rights violations that occur can be seen as a threat to regional and global stability. Therefore, humanitarian intervention serves not only to protect the Rohingya ethnic group but also to prevent the potential for wider conflicts that could disrupt the global order. Any humanitarian intervention proposed through the UN Security Council must have the approval of five permanent members, including the People's Republic of China (PRC). However, these efforts are often hampered by the use of vetoes, as seen in the Rohingya situation. The People's Republic of China, because of its large economic interests in Myanmar, uses its veto power to protect the Myanmar government, which it views as a strategic trading partner, particularly in the energy sector.

These objections reflect the complexity of international politics, where national interests often trump the urgent need for humanitarian intervention. This highlights the challenges in applying the principle of responsibility to protect, especially when geopolitical and economic interests are involved. The United Nations has repeatedly condemned the Myanmar government for acts of violence against the Rohingya ethnic group, but the Myanmar government's response has often been minimal. Despite various reports and recommendations from international bodies, efforts to end violence and discrimination have not yielded significant results.

In addressing human rights abuses in Myanmar, the theory of state sovereignty argues that sovereign states have the right to make decisions free from external influences and to fight for their own rights without having to submit to the demands of other countries. The case of genocide in Myanmar is a problem that must be handled by the state independently. Because of its sovereignty, Myanmar is not obliged to accept state intervention or other legal institutions related to the genocide of the Rohingya ethnic group. In addition, the International Criminal Court (ICC)

²⁷ Badescu, Cristina. *Humanitarian Intervention and The Responsibility to Protect: Security and Human Rights*. (London: Routledge, 2010).

cannot arbitrarily take control of these cases, as its function is to complement the national justice system. In addition, the ICC faces challenges in handling this genocide case because Myanmar is not a signatory to the 1998 Rome Statute.

It is important to realize that state sovereignty has limits. Restrictions on state sovereignty can be carried out when it comes to human rights. These restrictions are intended to safeguard humanity and protect individuals from abuse of power by the state and its officials. As a country of the rule of law, Myanmar should consider human rights in every regulation or policy decision. Human rights are universal and apply to all individuals, regardless of their identity, race, or religion. Therefore, every citizen in the jurisdiction of Myanmar has the right to the protection of his rights, as it is the responsibility of the state to guarantee and enforce those rights.

The explanation shows that human rights violations in Myanmar have caused a lot of casualties and considerable suffering. These violations are in direct conflict with international legal standards. The "Draft Article on State Responsibility for International Wrongful Actions," developed by the International Law Commission (ILC), does not provide a specific definition of state responsibility. Article 1 of the draft outlines the circumstances that may give rise to state liability, in particular when a state commits an act that is considered wrong under international law. This wrong action can manifest in the form of an active action or negligence. Under this framework, the entity responsible for all human rights violations in Myanmar is the state itself. This is supported by the ICJ's ruling in the Barcelona Case which affirms that every country has a legal obligation to protect and advance human rights. Consequently, violations involving both elements (protection and fulfillment of human rights) will trigger state liability. This scenario underscores the great difficulties in advancing human rights and resolving international conflicts, especially when the countries involved do not comply with their obligations. The Myanmar government's disregard for this situation has led to a prolonged humanitarian crisis, prompting the international community to continue to seek solutions to protect the Rohingya ethnic group.

D. Conclusion

Public international law constitutes a framework of norms governing relations between states while emphasizing the protection of fundamental human rights as universal and inalienable entitlements. Instruments such as the Universal Declaration of Human Rights reflect the international community's commitment to safeguarding human dignity and responding to serious violations across national boundaries. The situation of the Rohingya in Myanmar illustrates a profound challenge to this framework, as systematic discrimination, denial of citizenship, forced displacement, and widespread violence have resulted in grave human rights violations. These conditions demonstrate the gap between normative international legal standards and their effective implementation, particularly in contexts where state authorities fail to recognize or protect vulnerable populations.

Despite growing international attention, efforts to ensure accountability and protection for the Rohingya remain constrained by political resistance and the principle of state sovereignty. Myanmar's continued refusal to acknowledge the Rohingya as a recognized ethnic group and its denial of alleged human rights abuses have significantly hindered the enforcement of international norms. Although the international community, including the United Nations, has initiated humanitarian responses and called for accountability, these measures have yet to produce comprehensive justice. Accordingly, strengthening international legal mechanisms, enhancing collective action, and reinforcing state compliance are essential to ensuring more effective protection of marginalized groups and addressing serious human rights violations in the future.

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G. Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

H. References

- Adolf, Huala. *Hukum Penyelesaian Sengketa Internasional*. (Jakarta: Sinar Grafika, 2020).
- Ali, Zezen Zainul, et al. "Navigating Social Piety and State Stability in Indonesia's Response to the Rohingya Refugee Crisis." *Human Rights in the Global South (HRGS)* 3, no. 2 (2024): 189-208.
- Arianta, Ketut, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliartini. "Perlindungan Hukum Bagi Kaum Etnis Rohingya dalam Perspektif Hak Asasi Manusia Internasional." *Jurnal Komunitas Yustisia* 3, no. 2 (2020): 166-176.
- Badescu, Cristina. *Humanitarian Intervention and The Responsibility to Protect: Security and Human Rights*. (London: Routledge, 2010).
- Ebbighausen, Rodion. "Tidak Ada Perspektif bagi Warga Muslim Rohingya di Myanmar", *DW Online*, August 8, 2022. Retrieved from <https://www.dw.com/id/tidak-ada-perspektif-bagi-warga-rohingya-di-myanmar/a-62913650>
- Franciska, Christine. "Foto-foto 'penyiksaan kaum Rohingya': yang palsu dan yang asli", *BBC Indonesia*, November 23, 2016. Retrieved from <http://www.bbc.com/indonesia/trensosial-38074272>
- Gunawan, Yordan, Carissa Shifa Novendra, and Aldha Febrila. "Indonesia's Responsibility Towards Rohingya Refugees: Analysis of the 1951 Refugee Convention." *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 182-194.
- Itasari, Endah Rantau. "Memaksimalkan Peran Treaty of Amity and Cooperation in Southeast Asia 1976 (TAC) dalam Penyelesaian Sengketa di ASEAN." *Jurnal Komunikasi Hukum (JKH)* 1, no. 1 (2015): 14-23.

- Kasim, Ifdhal, and Johanes da Masenus Arus (eds). *Hak Ekonomi, Sosial dan Budaya (Esai-Esai Pilihan Buku 2: Budaya)*. (Jakarta: eLSAM, 2001).
- Kurniawan, Nalom. "Kasus Rohingya dan Tanggung Jawab Negara dalam Penegakan Hak Asasi Manusia." *Jurnal Konstitusi* 14, no. 4 (2017): 880-905.
- Mahadevi, Ayisha, et al. "Implementasi Hal Asasi Manusia Internasional dalam Pemenuhan Asas Membership oleh Myanmar Kepada Etnis Rohingya." *PARAPOLITIKA: Journal of Politics and Democracy Studies* 3, no. 2 (2022): 142-157.
- Mangku, Dewa Gede Sudika. "Pemenuhan Hak Asasi Manusia kepada Etnis Rohingya di Myanmar." *Perspektif Hukum* 3, no. 1 (2021): 1-15.
- Midriyan, Arzaina, et al. "Penegakan Hukum Hak Asasi Manusia di Indonesia." *Karimah Tauhid* 2, no. 1 (2023): 249-255.
- Muttaqin, Entol Zaenal. "Indonesia's Protection of Rohingya Refugees and Regional Geopolitical Principles." *Lampung Journal of International Law* 6, no. 1 (2024): 41-54.
- Putra, Ketut Alit, Ni Putu Rai Yuliantini, and Dewa Gede Sudika Mangku. "Analisis Tindak Kejahatan Genosida oleh Myanmar Kepada Etnis Rohingnya Ditinjau dari Perspektif Hukum Pidana Internasional." *Jurnal Komunitas Yustisia* 1, no. 1 (2018): 66-76.
- Rasyid, Sulaiman, et al. "The Role of Indonesian Diplomacy in Managing the Conflict between The Myanmar Government and The Rohingya Muslim Ethnic." *Unnes Law Journal* 8, no. 1 (2022): 159-178.
- Renanda, Vella Septia, et al. "Perlindungan Hukum Terhadap Kaum Rohingya dalam Perspektif HAM dan Hukum Internasional." *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2.1 (2022): 143-152.
- Robertson, Geoffrey. *Crimes Against Humanity: The Struggle for Global Justice*. (London: Penguin UK, 2006).
- Roht-Arriaza, Naomi. "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law." *California Law Review* 78 no. 2 (1990): 449-513.
- Setiyani, Setiyani, and Joko Setiyono. "Penerapan Prinsip Pertanggungjawaban Negara Terhadap Kasus Pelanggaran

- HAM Etnis Rohingya di Myanmar." *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 261-274.
- Shaw, Malcolm N. *International Law*. (Cambridge, MA: Cambridge University Press, 2017).
- Silitonga, Tatar Bonar. "Tantangan Globalisasi, Peran Negara, dan Implikasinya Terhadap Aktualisasi Nilai-Nilai Ideologi Negara." *Jurnal Civics: Media Kajian Kewarganegaraan* 17, no. 1 (2020): 15-28.
- Syofyan, Ahmad. *International Law*. (Bandar Lampung: Center for Constitutional and Legislative Studies, 2022).
- Thontowi, Jawahir. *Hukum Internasional Kontemporer*. (Bandung: Rafika Press, 2007).
- Utama, I. Gede Angga Adi, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliartini. "Yurisdiksi International Criminal Court (ICC) Dalam Penyelesaian Kasus Rohingnya dalam Perspektif Hukum Internasional." *Jurnal Komunitas Yustisia* 3, no. 3 (2020): 208-219.
- Utami, Mumpuni Tri. "The Implementation of Non-Refoulement Principle in Case of Rohingnya." *The Digest: Journal of Jurisprudence and Legisprudence* 1, no. 2 (2020): 197-222.
- Zahed, Iqthyer Uddin Md. "Responsibility to protect? The international community's failure to protect the Rohingnya." *Asian Affairs* 52, no. 4 (2021): 934-957.
