

## LEGAL STUDY OF STATELESS PERSONS AND THEIR PROTECTION UNDER INTERNATIONAL LAW (CASE STUDY OF ROHINGNYA ETHNIC GROUPS IN MYANMAR)

Dwi Astuti Palupi  
Ahmad Iffan  
Deaf Wahyuni Ramadhani

### ABSTRACT

*The Rohingya are the most persecuted ethnic minority in the world. They are referred to as a group of ethnic Muslims who have lived for centuries in Myanmar. These ethnic groups are not considered official ethnic groups and have been denied citizenship since 1982. They have been forced to accept various forms of discrimination and the treatment of human rights violations, which this issue is protected by international law. It is interesting to do research that is the regulation of International Law regarding the protection of "stateless person" and what protection can be given to the Rohingya Ethnic who were expelled from Myanmar. By using normative legal research methods, namely legal research carried out by examining library materials with the collection and study of documents that are analyzed qualitatively. From this study, the results were obtained that the rules regarding the right to ethnic Rohingya contained in the Universal Declaration of Human Rights 1948 (UDHR) and the Convention Relating to the Stateless Person in 1954, the right for every person to citizenship and no one can be revoked arbitrarily citizenship. Article 1 of the 1954 Convention, clearly states that citizens without citizenship can defend fundamental rights and freedoms without discrimination, and no person who is not a citizen can be treated worse than any foreign national. The parties that should be responsible for providing protection for the Rohingnans are the Myanmar Government first, then the UN, ASEAN and the OIC as International Organizations participated in by Myanmar, including those who can help pay attention and protect neighboring countries such as Bangladesh, India, Thailand, Malaysia and Indonesia.*

*Keywords: Stateless Person, Legal protection, Ethnic Rohing, International law and Indonesian law.*

### INTRODUCTION

Ethnicity is one of the minority groups formed because of the characteristics determined by the group itself. The most important main characteristic in ethnic groups is the ability to share the same cultural traits. Rohingyas are often described as "the most persecuted minority in the world". At present, there are around 1.1 million Rohingya Muslims living in the Western world known as Burma. <sup>1</sup>( Fedrik Barth,1998). The Myanmar government has carried out acts of discrimination against Rohingyas based on race, ethnicity, color and religion; Many victims of human rights violations by the Myanmar government, including unlawful executions and confiscation of their homes (Nic Dunlop, 2007.)

History records various human rights violations, caused by unfair and discriminatory treatment on the basis of ethnicity, race, color, culture, language, religion, class, gender, social status, politics, and ancestry and so on. This violation occurs horizontally or vertically or vice versa. Many of them are classified as gross violations of human rights (gross violation of human rights) (Prinst Darrin,2001). UU no. 26 of 2000 concerning Human Rights Courts, defines Serious Human Rights Violations namely, genocide crimes; and crimes against humanity (*kompasiana.com*). While the International Convention on the Elimination of All Forms of Racial Discrimination provides protection against freedom from discrimination. Article 5 of this Convention states;

"... States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the rights of everyone, regardless of race, color, or national or ethnic origin, for equality before the law, especially in the enjoyment of rights following:

Based on the above, the writer is interested in writing; Juridical Study of Stateless Persons and Their Protection under International Law (Case Study of Rohingya Ethnic Groups).

### LITERATURE REVIEW

Ethnic Rohingya in International Law.

Ethnicity is a group of people because of equality in race, religion, national origin or a combination of these categories which is bound to the cultural value system. Ethnicity or ethnicity is a group of people who are still considered to have biological relations (Fredrick Barth, Hassan Shadily MA,2012). Ethnic protection and measures to combat racial discrimination have been carried out by the United Nations in the form of adopting a number of Resolutions, Conventions and Declarations. Some international instruments that contain ethnic protection include:

Convention on the Prevention and Punishment of the Crime of Genocide, 1948 Convention Against Discrimination in Education, 1962. International Convention on the Elimination of All Forms of Racial Discrimination, 1965. International

Covenant on Civil and Political Rights, 1966. Declaration on Race and Racial Prejudice, 1978. Convention on the Rights of the Child, 1989. and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.

Citizens' Rights In the Universal Declaration of Gross Violation of Human Right.

The Universal Declaration of Human Rights (UDHR) shows Human Rights as a fundamental right in Article 1:

"All human beings are born free and equal in dignity and rights. They are blessed with reason and conscience and must act with fellow humans in a spirit of brotherhood. Although the UN has regulated human rights, a number of human rights violations have still been found. According to the UN, there are several types of human rights violations based on certain categories, there are forms of gross human rights violations and minor human rights violations."

The types of gross human rights violations include:

Crime of Genocide (Genocide).

Genocide crimes are included in the types of gross human rights violations that are within the jurisdiction of the International Criminal Court. Genocide is a massacre that is mass or systematically against one ethnic group or group of ethnic groups with the intent and purpose to exterminate the nation to extinction.

Humanity Crimes

This human crime refers to the type of human rights violations in acts of mass murder that occur systematically that are widespread aimed at a group of civilians which includes actions: Murder, Extermination, Slavery, Forced displacement of the population, Severe deprivation of physical freedom, Torture, Rape, sexual slavery, forced prostitution, forced sterilization, Persecution, Enforced disappearance, inhumane acts which caused severe suffering, mental and physical.

Definition of human rights violations according to Article 1 Number 6 No. 39 of 1999 viz "Every act of a person or group of people including state apparatus, whether intentional or unintentional or negligence that legally reduces, inhibits, limits and or revokes human rights of a person or group of people guaranteed by law and does not get or is concerned will not obtain regrets for law that is fair and true based on applicable legal mechanisms ". Based on this understanding, it is clear that human rights violations are strongly emphasized to all groups without exception, both ordinary people and state officials.

In fact, it was also explained that both intentional and unintentional remains a violation of human rights. So in this case you have to be careful because it can also when you are not aware that it is violating the rights of others. According to Law No 26 of 2000 concerning the Human Rights Court stated that Human Rights Violations namely;

"Every act of a person or group of people including state officials whether intentional or negligence that legally reduces, inhibits, limits and or revokes the human rights of a person or group of people guaranteed by this Law, and is not obtained, or is concerned will not obtain fair and correct legal settlement, based on applicable legal mechanisms ".

Based on the understanding of human rights violations it is concluded that the law has guaranteed human rights fairly. The state is obliged to provide protection for citizens or people who are in the territory of their country. According to C.de Rover, human rights violations are any internationally wrongful actions of a country, and pose an international responsibility to that country. International wrongdoing is deemed to exist if: (a) Acts consisting of an act or omission are attributed (blamed) to the state based on international law, (b) The action is a violation of the international obligations of the country ( C.de Rover, 2000 ).

Based on Article 1 paragraph 6 of Law No. 39 of 1999 concerning Human Rights

"Human Rights Violations are every act of a person or group of people including State Apparatus either intentionally or unintentionally or negligently that violates the law, reduces, loses, limits and or revokes the human rights of a person or group of people guaranteed by this Law, and do not obtain or are concerned that they will not obtain a fair and correct legal settlement, based on the applicable legal mechanism. "

In Indonesian law, international crime is regulated in Law Number 26 of 2000 concerning Human Rights Courts. It's just that international crime translates as gross human rights violations. Most likely In Law Number 39 of 1999 Concerning Human Rights in Article 104 paragraph (1) explains:

"Serious human rights violations" are genocide of arbitrary or extra judicial killing of torture, enforced disappearance, slavery, or systematic discrimination. "

Article 7 of Law Number 26 of 2000 concerning the Human Rights Court, what is meant by "gross human rights violations" are human rights violations which include: (a) Crimes of Genocide, (b) Crimes against humanity. Based on the explanation of Article 7 of Law No. 26 of 2000, it is explained that what is meant by genocide and crimes against humanity is in accordance with the "Rome Statute of The International Criminal Court."

Rome status also explained the definition of gross human rights violations namely;

"Rome Statute Art. 5: the most serious crimes of concern to the international community as a humanity; (iii) Warcrimes; (iv) The crime of aggression. "

It can be seen in Article 7 of Law No. 26 of 2000 stipulates that gross human rights violations only include genocide and crimes against humanity.

## **METHODS**

His type of research is normative juridical research; which refers to the legal norms contained in legislation. Required data; secondary data; Legal materials needed include three things, namely: Primary Legal Materials, (Law No. 26 of 2000, Law No. 39 of Year), legal materials, jurisprudence, and the UDHR 1948, Convention Relating to the Stateless Person 1954. Data collection tools are document studies; by way of content analysis (content analysis), which is a technique to analyze writing / documents by systematically identifying the characteristics / characters and messages / intent contained in the writing / document of a document. And Data analysis methods used are qualitative approaches; which is a research procedure that produces descriptive analytical data.

## **OBJECTIVE OF THE STUDY**

The objectives of this study are: To find out how international law regulates citizens who are expelled from their country (stateless person). And To find out what form of protection can be given to ethnic Rohingya who were driven out of the country of Myanmar. Protection of citizens displaced from their country (stateless person) according to international law, Even though it has been regulated in international conventions, Stateless Persons still exist on earth. One Ethnic who does not have citizenship is the Rohingya Ethnic where the Ethnic is not recognized as a citizen of any country and even the rights they have as Stateless Persons are violated by the country where they are located.

Discrimination related to arbitrary deprivation of national rights called identity cards carried out through the establishment of the Myanmar State Citizenship Act 1982. This revocation for Rohingya people by the Myanmar government was one of the factors that made them willing to risk their lives across the sea, around 300,000 people. The White Card, which is the last sign that shows they are residents of Myanmar, has been requested to be returned by the authorities and declared invalid since 31 March 2015, (BBC Indonesia).

In connection with the withdrawal of the white card, the Rohingya Minority Ethnic loses its right to vote. One of the fundamental rights stipulated in the Universal Declaration of Human Rights 1948 (UDHR) is the right for everyone to citizenship and no one can be revoked arbitrarily or denied the right to change his citizenship (Article 15). Recognition of citizenship is also regulated in various Conventions.

Fulfillment, promotion and respect for human rights is a basic concept that serves as a benchmark of state responsibility to give a respectable place to humanity. The responsibility of implementing national protection in this broad sense, which is practically on the shoulders of the state both through the authority in the legislative, executive and judicial fields (Saafroedin Bahar).

In connection with the Rohingya issue, as an illustration what has been done by the Myanmar government shows that the function of the state is not functioning properly, especially in protecting and fulfilling the Rohingya ethnic rights as stated in the DUHAM. Along with the increasing involvement of civil society, political parties and stakeholders in the democratic process. Although in Myanmar there is already openness in discussing human rights issues more critically. But on the other hand, the Government of Myanmar is still demanded to be more serious in discussing and resolving human rights cases that occur in the Rohingya ethnic group as part of the Myanmar democratic transition process

Based on the above rules, then all people should have citizenship without exception, because citizenship is a right to get right where citizenship is a legal bond between the state and its citizens. These legal ties make a person able to enjoy human rights contained in international legal instruments as well as in the national legal provisions of each country.

People who do not have citizenship (stateless person) are defined as someone who is not considered a citizen by the state or based on national law

This lack of citizenship can be bad for someone who does not have it. Ownership of citizenship is very important for someone to be able to participate fully in society and is a society to enjoy various kinds of human rights. The Convention Relating to the Stateless Person is stipulated in the Conference on Plenipotentiaries Convened by the Economic and Social Council. Article 1 states, a person without citizenship is;

"A person who is not considered a national by any state under the operation of its law.

This formula is recognized as customary international law.

This Convention states that people without citizenship can defend their basic rights and freedoms without discrimination; such as property rights, free access to justice, access to work, housing at least as provided to foreigners and basic education and public assistance equivalent to what citizens receive. Convention relating to the Stateless Person is based on the basic principle that no person who is not a citizen can be treated worse than any foreign national. Other rights guaranteed by this convention and not

regulated in any convention are the right to administrative assistance to persons without citizenship, the right to self-identification, and travel documents (UNHCR).

From the above explanation it can be concluded; internationally the right of every person, especially his Rohingya citizens in this case is all human beings are born free and equal in dignity and human rights. People without citizenship can defend their basic rights and freedoms without discrimination.

Protection of ethnic Rohingyas expelled from the State of Myanmar according to international law.

Regardless of whether Rohingyas are ethnic or not, and whether they belong to Myanmar ethnicity or not, it is clear that Rohingyas are migrant communities from Bangladesh who have lived in Arakan for hundreds of years. As a community that has long lived in an area, of course they should get their basic rights, especially citizenship status.(UNHCR). But the Myanmar government does not give citizenship to the Rohingya ethnic group, it even offers options as a solution in the form of sending thousands of Rohingyas to other countries or remain in Arakan, but is under UN supervision. From the solutions offered, it is clear that Rohingya ethnic groups still cannot breathe freely until the next few years

This is the basic strength of the Myanmar government to discriminate, refuse granting citizenship status. namely the 1982 Burmese Citizenship Act which has excluded Rohingya as an recognized ethnic group in Myanmar. The Myanmar government does not recognize Rohingya as citizens (stateless) and as ethnic groups that exist in Myanmar. Myanmar itself has a multilevel citizenship system based on how one's ancestors were acquired, including: (a) Full citizens are descendants of residents who lived in Myanmar before 1823 or were born to parents who were Myanmar citizens at birth. (b) Associate citizens are those who obtain citizenship through the 1948 Union Citizenship Law. (c) Naturalized citizens refer to people who lived in Myanmar before 4 January 1948 and applied for citizenship after 1982.

ASEAN as a regional organization has the responsibility to handle cases of human rights violations, in accordance with the Responsibility to Protect doctrine adopted by UN member states at the 2005 United Nations World Summit. The ranks of the Ministry of Foreign Affairs of ASEAN member countries have issued statements of attitude, namely: (a) Encourage Myanmar to continue working with the United Nations in dealing with the humanitarian crisis in Arakan. (b) Expressing the seriousness of the ASEAN regional organizations to provide humanitarian assistance. (c) Underlines that efforts to encourage national harmony in Myanmar are an integral part of the democratization process in the country.

Protection of ethnic Rohingans expelled from their countries has been established in the Conference on Plenipotentiaries Convened by the Economic and Social Council through Resolution 526 a (XVII) April 26, 1954 and came into force on June 6, 1960; which is the main international legal instrument that defines and regulates the status and treatment of people and citizenship. This formula is recognized as customary international law.

This Convention states that persons without citizenship can defend their basic rights and freedoms without discrimination. These rights include property rights, free access to justice, access to work, housing at least as provided to foreigners and basic education and public assistance equal to what citizens receive. Convention Relating to the Statute Person, based on the basic principle that no one who is not a citizen can be treated worse than any foreign nationality. Other rights guaranteed in this convention and not regulated in any convention are the right to administrative assistance to persons without citizenship, the right to self-identification, and travel documents.

In this condition, the party that should be responsible: The first responsibility clearly lies with the State of Myanmar which from its inception has negated the existence of the Rohingya nation. The second responsibility rests with international bodies such as the United Nations and ASEAN. Because Myanmar is a member of the United Nations and ASEAN. Third responsibility is the neighboring neighboring country. Such as Bangladesh, India, Thailand, Malaysia, to Indonesia. However, not all countries want to accommodate them, even though the 1951 refugee status Convention states that recipient countries must not refuse and return refugees / asylum seekers to their countries when the conditions in their country endanger the safety of the refugees. The fourth responsibility is on Muslim-occupied countries. Rohingyas are Muslims whose Islamic history dates back to the 14th century CE

## CONCLUSIONS

Protection of ethnic Rohingans expelled from their countries has been established in the Conference on Plenipotentiaries Convened by the Economic and Social Council through Resolution 526 a (XVII) 26 April 1954 and came into force on 6 June 1960. The 1954 Convention was the main international legal instrument that defines and regulate the status and treatment of people and citizenship. In Article 1 of the 1954 Convention it is said that what is meant by a person without citizenship is "A person who is not considered a national by any state under the operation of its law."

This Convention states that persons without citizenship can defend their basic rights and freedoms without discrimination. These rights include property rights, free access to justice, access to work, housing at least as provided to foreigners and basic education and public assistance equivalent to what citizens receive. Convention Relating to the Stateless Person is based on the basic principle that no one who is not a citizen can be treated worse than any foreign nationality. Other rights guaranteed in this convention and not regulated in any convention are the right to administrative assistance to persons without citizenship, the right to self-identification, and travel documents.

The rules regarding citizenship rights are contained in the Universal Declaration of Human Rights (UDHR) or the Universal Declaration of Human Rights and the UN Charter of 1948 in which the right for every person to citizenship and no one can be

revoked citizenship arbitrarily or denied their rights to change his citizenship. Recognition of citizenship is also contained in the International Convention Relating to the Status of Stateless Persons 1954, International Convention on Reduction of Statelessness of 1961, International Civil Convention, and Pokitacak Rights 1966, Convention on the Rights of the Child, and also contained in the International Convention on the Elimination of All from Discrimination Against Women.

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Dwi Astuti Palupi  
*Lecturer of Faculty of Law,  
Bung Hatta University, Padang,  
West Sumatera, Indonesia  
Email: dwiastuti@yahoo.com*

Ahmad Iffan  
*Lecturer of Faculty of Law,  
Bung Hatta University, Padang,  
West Sumatera, Indonesia  
Email: a.jurist08@gmail.com*

Deaf Wahyuni Ramadhani  
*Lecturer of Faculty of Law,  
Bung Hatta University, P  
adang, West Sumatera, Indonesia  
Email: deaf.wahyuni@yahoo.com*