

LEGAL PROTECTION AGAINST ROHINGYA ETHNIC IN A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

Rohingya ethnicity is an ethnic minority found in Myanmar. Rohingya ethnics are not recognized by the Myanmar Government as their citizens, this is why the existence of their ethnic groups becomes uncertain. Many of the Rohingya left Myanmar with the reason that their souls were threatened, the exodus of ethnic Rohingya refugees spread in the Southeast Asia region including Indonesia. By looking at this condition, the Indonesian Government should not repatriate Rohingya ethnic refugees back in their country, with the principle of non-refoulement of refugee recipient countries prohibited from refusing refugees who come to their country, if this is done then this can be considered a violation of international law. to accept refugees and provide protection to refugees, this is carried out as a form of respecting international law.

Keywords: Rohingya ethnicity, human rights, legal protection

Introduction

International practice related to giving recognition to new countries is guided by several criteria in the form of confidence in the existence of stability in the country, general support from the people of the country concerned, willingness to carry out international obligations. The state as the subject of international law is a party that is obliged to protect, guarantee and fulfill human rights (HAM). The obligations of the state concerning international human rights are regulated in various international human rights law instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Sujatmoko, 2016: 59).

The UDHR received and announced by the United Nations General Assembly on 10 December 1948 through resolution 27 A (III) stated on the definition of human rights as stipulated in Article 1 to Article 3 that all people are born independent and have the same dignity and rights. They are blessed with reason and conscience and should associate with each other in brotherhood. In addition, it is stated that everyone has the right to all the rights and freedoms stated in this UDHR with no exceptions, such as differences in race, color, sex, language, religion, politics and other views, origins nationality or community, property rights, birth or other position.

In addition, also in Article 2 of the UDHR in 1948, the law or international position of the country or region where a person originated, both from an independent state, in the form of guardianship, colonies or under other sovereignty, further emphasized in Article 3 UDHR In 1948 that everyone has the right to life, freedom and safety as individuals. Furthermore, there will be no distinction on the basis of political position.

Even though there are rules regarding human rights even against the entry into force of human rights, human rights violations continue to occur throughout the world. Some cases of human rights violations that occurred include the Israeli conflict with Palestine which caused many casualties in Palestine and even thousands including children, women and volunteers were victims. Regarding violations against human rights not only occur in the conflict between Israel and Palestine which is in the spotlight of the world there are also other cases, namely the opposition and the Egyptian government, Adolf Hitler Germany, Benito Mussolini Italy, the Bosnian War, and those who recently reappeared suppression of Myanmar's Rohingya ethnicity.

Myanmar, also known as Burma, or what is called Burma in the Western world is a Southeast Asian country that has been ruled by military rule since the 1988 coup. In 1988, there was a wave of large demonstrations against the military junta government. This wave of demonstrations ended with acts of violence committed by the army against the demonstrators. The change of name from Burma to Myanmar was carried out by the military junta on June 18, 1989. In the 1990 elections the pro-democracy party led by Aung San Suu Kyi won 82 percent of the votes but the results of this election were not recognized by the ruling military regime. The nation's capital was previously located in Yangon before being transferred by the military junta government to Naypyidaw on 7 November 2005. The military junta changed Burma's name to Myanmar so that non-Burmese ethnic groups felt part of the country. Even so, this change of name was not fully adopted by the international community.

Rohingya is one of the ethnic groups living in Myanmar. Rohingya ethnicity has inhabited the city in the northern state of Rakhine, also known as Arakan, the western part of Myanmar, since the 7th century AD. At present there are still around 600,000 Rohingya living in Myanmar. Rohingya are Muslim minorities who have lived in western Myanmar for centuries. Even though it has lived in Myanmar for centuries, the Myanmar Government considers that the Rohingya belong to ethnic Bengalis so that the Government of Myanmar does not recognize them as one of the ethnic Myanmar, this causes them not to obtain Myanmar citizenship (Faniati, 2012: 7).

The Rohingya community has experienced various forms of human rights violations which are included in acts of genocide, especially since 1978. The freedom of movement for Rohingya people is strictly restricted and most of them are not recognized as citizens of Myanmar (Asriyani, 2013: 42). Rohingya Muslims were also expelled to leave Myanmar and even they were killed, their homes burned so many victims both children and women arose.

Research methods

Based on its nature, this study is a normative research that is research that intends to provide data as detailed as possible regarding Legal Protection Against Rohingya Ethnic In a Human Rights Perspective. Based on the form, this research is evaluative and prescriptive research, evaluative research because this study intends to provide an in-depth analysis of legal protection against the Rohingya, while prescriptive research because this study will also provide appropriate solutions based on the principles of international law to overcome obstacles - barriers to resolving issues relating to ethnic Rohingya refugees in the perspective of human law and the purpose of this legal research is normative legal research and literature.

Research Result

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly through GA. Resolution 2200A (XXI) on 16 December 1966, and in force from 23 March 1976 in accordance with Article 49 of the covenant. Article 49 allowed that the covenant will enter into force three months after the date of the deposit of the thirty-fifth instrument of ratification or accession. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of August 2017, the Covenant has 117 parties and six more signatories without ratification. The ICCPR is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).

The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets in Geneva and normally holds three sessions per year.

The ICCPR has its roots in the same process that led to the Universal Declaration of Human Rights. A "Declaration on the Essential Rights of Man" had been proposed at the 1945 San Francisco Conference which led to the founding of the United Nations, and the Economic and Social Council was given the task of drafting it. Early on in the process, the document was split into a declaration setting forth general principles of human rights, and a convention or covenant containing binding commitments. The former evolved into the UDHR and was adopted on 10 December 1948. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Drafting continued on the convention, but there remained significant differences between UN members on the relative importance of negative Civil and Political versus positive Economic, Social and Cultural rights. These eventually caused the convention to be split into two separate covenants, "one to contain civil and political rights and the other to contain economic, social and cultural rights." The two covenants were to contain as many similar provisions as possible, and be opened for signature simultaneously. Each would also contain an article on the right of all peoples to self-determination.

The first document became the International Covenant on Civil and Political Rights and the second the International Covenant on Economic, Social and Cultural Rights. The drafts were presented to the UN General Assembly for discussion in 1954, and adopted in 1966. As a result of diplomatic negotiations the International Covenant on Economic, Social and Cultural Rights was adopted shortly before the International Covenant on Civil and Political Rights. Together, the UDHR and the two Covenants are considered to be the foundational human rights texts in the contemporary international system of human rights.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A (XXI), and came in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of September 2018, the Covenant has 169 parties. A further four countries, including the United States, have signed but not ratified the Covenant.

The ICESCR (and its Optional Protocol) is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), including the latter's first and second Optional Protocols. The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights. The ICESCR has its roots in the same process that led to the Universal Declaration of Human Rights. A "Declaration on the Essential Rights of Man" had been proposed at the 1945 San Francisco Conference which led to the founding of the United Nations, and the Economic and Social Council was given the task of drafting it. Early on in the process, the document was split into a declaration setting forth general principles of human rights, and a convention or covenant containing binding commitments. The former evolved into the UDHR and was adopted on 10 December 1948 (https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights).

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The Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) is a historic document that was adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 at the Palais de Chaillot in Paris, France. Of the then 58 members of the United Nations, 48 voted in favor, none against, eight abstained, and two did not vote. The Declaration consists of 30 articles affirming an individual's rights which, although not legally binding in themselves, have been elaborated in subsequent international treaties, economic transfers, regional human rights instruments, national constitutions, and other laws. The Declaration was the first step in the process of formulating the International Bill of Human Rights, which was completed in 1966, and came into force in 1976, after a sufficient number of countries had ratified them (https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights).

Some legal scholars have argued that because countries have constantly invoked the Declaration for more than 50 years, it has become binding as a part of customary international law. However, in the United States, the Supreme Court in *Sosa v. Alvarez-Machain* (2004), concluded that the Declaration "does not of its own force impose obligations as a matter of international law." Courts of other countries have also concluded that the Declaration is not in and of itself part of domestic law.

The UDHR which was received and announced by the UN General Assembly on 10 December 1948 through resolution 27 A (III) stated regarding the definition of human rights as stipulated in Article 1 to Article 3 that All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Everyone has the right to life, liberty and security of person.

In Articles 4 to 10 it is explained that No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.; No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; Everyone has the right to recognition everywhere as a person before the law; All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination; Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law; No one

shall be subjected to arbitrary arrest, detention or exile; Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Then articles 21 to 25 explain about (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives, (2) Everyone has the right to equal access to public service in his country, (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures; Everyone, as a member of society, has the right to social security and is entitled to realization, through (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control, (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection; (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; (2) Everyone, without any discrimination, has the right to equal pay for equal work, (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection, (4) Everyone has the right to form and to join trade unions for the protection of his interests and Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

United Nations High Commissions for Refugees (UNHCR)

International institutions that are competent with refugee affairs are the United Nations High Commissioner for Refugees, hereinafter abbreviated as UNHCR. This organization is a United Nations (UN) commission that specifically handles the problem of refugees (Wagiman, 2012: 188). UNHCR is mandated to take care of the problem of refugees established on December 14, 1950 post-World War II leading and coordinating international activities in protecting refugees and resolving refugee problems in the world. The main objective of UNHCR is to protect the rights and security of refugees ("The History of UNHCR, A Humble Global Organization", accessed from: <http://unhcr.org/id/id/tentang-unhcr/sejarah-unhcr>).

In an effort to deal with and protect international refugees, UNHCR has an official website and on its website states that they carried out eight activities in handling international refugees, namely: advocacy (finding advocacy), finding alternatives for camps (alternative to camp), distributing assistance, building capacity (capacity building), finding long-term solutions (durable solutions), emergency response (emergency response), funding (fund raising) and protection (protection) for refugees (UNHCR, "What We do", accessed from <http://www.unhcr.org/pages/49c3646cbf.html>).

UNHCR is one of the successful bodies in handling international refugees. In more than six decades, UNHCR has so far provided assistance to 65.3 million people to restart their lives. In addition, UNHCR has received the Nobel Peace Prize twice, namely in 1954 for its great work in helping refugees in Europe, then in 1981 for its contribution in the form of assistance to global refugees. The acceptance of this Nobel Peace Prize made UNHCR as one of the international organizations that received the second highest peace prize after the International Committee of the Red Cross, abbreviated as ICRC, won three times the Nobel Peace Prize (in "The High Commissioners", accessed from: <http://www.unhcr.org/pages/49c3646c8.html>).

Legal Protection Against Rohingya Ethnic In A Human Rights Perspective

Rohingya is one of the ethnic groups from Myanmar. Myanmar officially recognizes 135 ethnic groups of districts, grouped into 8 major national ethnic groups. Ethnic Burmese as much as 68%, Shan 9%, Karen 7%, Rakhine 4%, China 3%, India 2%, Mon 2% and other 5% The population that is not Myanmar constitutes 32% of the total population of Myanmar (Cia The World Factbook <http://www.cia.gov/library/publications/the-world-factbook/geos/bm.html> on December 26, 2017). The government's refusal and not regard the Rohingya Muslims as citizens, and instead say that the Rohingya are immigrants from Bangladesh we can see from the history and waves of Bangladeshi refugees.

In the 15th to 16th centuries the rulers of North Rakhine and Bangladesh carried out several collaborative activities, ranging from trade, military and the spread of religion. In this century there was a flow of immigration of Muslims from Bangladesh to Arakan. Then in 1784 the king of Myanmar namely Bodawpaya invaded and took over the North Rakhine kingdom to become central Myanmar. Because of the incident, the Rohingya finally fled to the Cox Bazar area in Bangladesh. Rohingyas who fled to Bangladesh some of them did not return to Myanmar or settle in Bangladesh and become integrated with the local community. In 1824, Britain colonized Myanmar to hold regional autonomy. Until World War II there were several incidents of rebellion that occurred. During British rule, there was Bangladesh migration to Myanmar, the British government considered this. But the migration that occurred during this period is considered illegal by the Myanmar government, and that is one reason why they reject Rohingya citizenship (Rizki, 2015: 3).

There are allegations that show the policies of the Myanmar government to discriminate against Rohingya Muslims in Rakhine State. The government of Myanmar has always considered the Rohingya Muslims as a group of foreign immigrants, not as

citizens of Myanmar. The majority of Buddhist citizens of Myanmar have also been broadcasting hatred towards Rohingya Muslims. There is evidence from 12 documents analyzed from 1993 to 2013 and obtain evidence that the government limits the basic freedoms of Rohingya Muslims in the Rakhine state. These restrictions occur in the form of permits, births, home repairs and construction of places of worship. Rohingya Muslims in Rakhine are also prohibited from traveling out of town without permission. In the report, it was also stated that Rohingya Muslims who are married are prohibited from having more than two children. And also if you want to get married you must apply for permission first (Rizki, 2015: 3).

It should be underlined that long before the horizontal complication in June 2012, the Myanmar government had implemented a number of policies which were essentially violations of human rights. The policy is specifically aimed at people from the Rohingya ethnic group, for example State policies concerning citizenship which are clearly discriminatory and very detrimental to them. This denial of citizenship status then raises other problems related to the rights of the Rohingya, such as concerning the right to life, security, the right to be treated before the law, restrictions on the right to freedom of movement / movement, rights not to be arbitrarily arrested or detained, the right to education, and the right to work (Sujatmoko, 2016: 160).

Denial of the citizenship status of Rohingya people can be said as a perfect example that illustrates the consequences that arise when a person does not have statelessness. Therefore, according to international law, a person must not be in a state without having citizenship status. Because, without citizenship, someone does not get a guarantee of legal protection. The right to citizenship and the right to not be discriminated against are human rights that have been guaranteed in international legal instruments, both in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international legal instruments (Sujatmoko, 2016: 161).

The 1982 Myanmar citizenship law did not explicitly recognize Rohingya people as citizens of Myanmar. The law does not mention Rohingya as an ethnic group besides the eight ethnic groups mentioned, namely Arakan, Burman, Chin, Kachin, Karen, Karenni, Mon and Shan. This legal status has made Rohingya people without legal protection at all and made them targets of violence. This situation is also considered a factor of violence in Arakan. This state of status actually took place in the mid-1970s, at that time the government required all citizens to have National Registration Certificates based on emergency immigration laws, but Rohingya people were only given Foreign registration cards and made their children difficult to attend school and difficult to find work (Sujatmoko, 2016: 161).

In this case, the Myanmar government issued a policy of burmanization and culture. Although in Myanmar there are various ethnic minorities who are religious but Buddhist, the ethnic group is still recognized as a Myanmar citizen. This is due to the reason that Rohingyas are Muslims and their identities such as physical characteristics and language are considered different from the majority of the population in Myanmar. Besides this there are restrictions on marriages where the Rohingya ethnic group takes years to get permission to get married, there are restrictions in terms of getting a job, there are limitations in terms of getting education which in this case has caused 80% of ethnicity to be illiterate. Based on this case, the Government of Myanmar has disobeyed the principle of prohibiting discrimination where this principle is a prohibition to give differences in treatment based on differences in religion, color, language and so on.

Some international instruments that regulate legal protection for Rohingya ethnicities who experience discrimination from the government of Myanmar are: Convention on Prevention and Punishment of Genocide Crimes Defined through UN General Assembly Resolution 260 A (III) on December 9, 1948. This Convention comes into force on January 12 1951. Convention on the Prevention and Punishment of the Crime of Genocide is the first human rights agreement ratified by the UN General Assembly. This Convention focuses on the protection of national, racial, ethnic and religious minorities from threats regarding their existence.

Conclusion

Legal protection for Rohingya ethnic groups based on international law in general has been regulated in international instruments such as The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) 1966, The International Covenant on Economic, Social and Cultural Rights (ICESCR), Genocide Convention, International Convention Against Torture, International Convention on the Elimination of All Forms of Racial Discrimination 1965, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, United Nations High Commission for Refugees (UNHCR) and Convention on the Status of Refugees.

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