

# ROHINGYA GENOCIDE IN THE PERSPECTIVE OF INTERNATIONAL CRIMINAL LAW AND GLOBAL RESPONSIBILITY

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**Abstract:** *The ethnic diversity in Myanmar is also a cause of conflict between different ethnic groups, especially between the majority and minority ethnic groups in this country. One of the most famous ethnic conflicts and in the world spotlight is the Rohingya ethnic conflict. This type of research is normative legal research. The procedure for collecting legal documents is carried out through literature studies. The nature of the research used in this study uses prescriptive-normative research. The results of the study indicate that there have been crimes against humanity against the Rohingya ethnic group in western Myanmar in the form of slavery, deportation or forced repatriation, sexual violence, and torture so that it can be stated that crimes against humanity against the Rohingya in western Burma are international crimes and are worthy of being called a case of genocide. The actions taken by the Myanmar government are violations of human rights in the Rohingya case, including the crime of genocide and also crimes against humanity. then the non-recognition of the Rohingya ethnic group into the list of ethnic groups in Myanmar is an attempt to eliminate existing ethnic groups.*

**Keywords:** *Rohingya; Myanmar; International Criminal Law.*

## 1. INTRODUCTION

Countries in the Southeast Asia (ASEAN) region have ethnic, racial, and religious diversity spread across each country. Myanmar as one of the ASEAN countries with a majority Buddhist population and many ethnicities. The population of Burma (Myanmar) has around 135 ethnic groups and subgroups. The Burmese ethnic group is the largest group (around 68%). Then Shan (9%), Karen (7%), Rakhine or Arakan (4%), and Mon (2%) (Human Rights Council, 2018). In addition, there are the Kachin, Chin, Karenni, and Rohingya ethnic groups (Human Rights Council, 2018). The large number of ethnic groups in Myanmar has caused conflict between the majority and minority ethnic

groups in the country, one of which is the Rohingya ethnic conflict. The Rohingya ethnic group living in one area of Myanmar has long been involved in conflict. The Rohingya ethnic group is a Muslim and minority ethnic group.

Countries in the Southeast Asian region (ASEAN) are known for their ethnic, racial, and religious diversity. One of the ASEAN member countries with a very diverse ethnic population is Myanmar. Myanmar is a predominantly Buddhist country with around 135 ethnic groups and subgroups. The Burmese are the largest group in Myanmar, with around 68% of the total population. In addition, there are the Shan (9%), Karen (7%), Rakhine or Arakan (4%), and Mon (2%) ethnicities as well as the Kachin, Chin, Karenni, and Rohingya ethnicities.(Ari Maulana et al., 2023)

However, the ethnic diversity in Myanmar has also caused conflicts between different ethnicities, especially between the majority and minority ethnicities in the country. One of the most famous ethnic conflicts that has been in the world spotlight is the Rohingya ethnic conflict. The Rohingya ethnic group is a Muslim minority group living in the northwestern region of Myanmar. The Rohingya ethnic group has been involved in conflict for decades with the Myanmar government and other majority ethnicities.

The Rohingya are an Indo-Aryan ethnic group from Rakhine (also known as Arakan, or Rohang in Rohingya) in Myanmar. The Rohingya are ethno-linguistically related to the Indo-Aryan languages of India and Bangladesh (as opposed to the majority Sino-Tibetan people of Myanmar). According to Rohingya and some religious figures, they originated from Rakhine state. Other historians claim that they migrated to Myanmar from Bengal primarily during the period of displacement that took place during the British rule in Burma and to some extent after Burma's independence in 1948 and during the Bangladesh Liberation War in 1971.(Yuliartini & Mangku, 2019)

Genocide is prohibited because it is a serious violation of human rights and universal humanitarian principles. It not only threatens the lives of individuals but also erases the existence of a group's culture, history, and identity. Internationally, genocide is governed by the Convention on the Prevention and Punishment of the Crime of Genocide (1948), which states that every country must prevent and punish anyone involved in such crimes. This act is considered an unforgivable moral violation and can cause deep social and psychological impacts on the victims and future generations.(Prasetyo, 2020)

Human rights crimes themselves are regulated in international law, namely in the Rome Statute of The International Criminal Court 1998 (Rome Statute of 1998) Art 5 explains the definition of human rights violations which reads: The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against

humanity; (c) War crimes; (d) The crime of aggression. which means that serious human rights violations include crimes of genocide, crimes against humanity, war crimes and crimes of aggression. And regarding the crime of genocide is regulated in article 6 of the Rome Statute (Putri et al., 2023).

One of the objectives of the convention on human rights is genocide formulated with the will to fight to prevent the recurrence of gross human rights violations that occurred in World War II. However, in practice, the crime of genocide still occurs. This Rohingya ethnic conflict is a conflict based on discriminatory treatment due to ethnic and religious differences. The Rohingya ethnic group is not recognized by the state of Myanmar and does not receive citizenship. The condition of a person without citizenship in everyday life can be the root cause of violations of other rights such as the right to education, health, marriage, employment, and even political rights. The problem of crime that occurs in Myanmar is one of the most serious in the world, because it not only has a negative impact on the people in the Myanmar region but also has an impact on other countries. In addition, the problem of genocide is not an easy matter to solve. Therefore, serious treatment is needed in dealing with this problem.

From the background above, the problem formulation is as follows:

1. Do Myanmar's actions against the Rohingya ethnic group constitute genocide, which is against international law?
2. Are there any obstacles to international legal protection for the Rohingya ethnic group?

## 2. METHODS

This type of research is normative legal research. Normative legal research is a scientific work of law that discusses law in a concept as a rule that applies in society, and becomes a guideline for the behavior of each individual (Muhaimin, 2020). The normative legal research method itself is defined as a legal research that examines principles, norms, theories, rules, which aims to find solutions to the problems faced (Nurhayati et al., 2021). According to Seorjono Soekanto, normative legal research is reviewing library resources that function as a basis for conducting legal research, which involves reviewing relevant literature and laws (Soekanto & Mamudji, 2006). Then the author also uses a case study approach. This approach allows researchers to dig deeply into the experiences and conditions faced by the Rohingya ethnic group, as well as to understand the relevant international criminal law context.

In this study, the procedure for collecting legal documents was carried out through a literature study, which in other words is collecting written information that is widely and generally distributed, and is needed for normative legal research.

The nature of the research used in this study uses the nature of prescriptive-normative research. The nature of prescriptive-normative research is observed as a

researcher's response as an effort to change existing legal materials into scientific information to be used in overcoming a problem, especially in finding a solution to a problem related to research. In the nature of prescriptive-normative research, arguments will be used on the results of the research to provide an assessment of the truth of the facts or a legal event being studied (Muhaimin, 2020).

### **3. RESULTS AND DISCUSSION**

#### **3.1. Myanmar's actions against the Rohingya ethnic group constitute genocide under international law.**

Rome Statute of The International Criminal Court 1998 (Rome Statute of 1998) Art 5 explains the definition of human rights violations, the forms of human rights violations contained in the Rome Statute are in the form of genocide, crimes against humanity, war crimes and crimes of aggression. The actions taken by the Myanmar government against the Rohingya ethnic group are included in human rights violations, namely genocide. Regarding genocide, it is explained in the Rome Statute in accordance with article 6 of the law, genocide is one or more acts carried out to destroy all or part of a national, ethnic, racial or religious group. Based on the facts that occurred that the actions of the Myanmar Government have caused hundreds of Rohingya ethnic groups to die, be injured, and some have fled to other countries to get a better life, the Myanmar Government has committed various violations of international law, namely cruelty against the Rohingya ethnic group, has resulted in people losing their lives, not to mention those who suffer from mental disorders. According to refugees in Bangladesh, no less than 3000 people have died and 883 people have mental disorders. In addition, as many as 925 children were displaced without relatives and 6,000 houses belonging to the Rohingya ethnic group were burned down in Rakhine. Until now, the number of Rohingya ethnic groups who have fled has reached 700,000 people. The actions of the Myanmar Government against the Rohingya ethnic group include arbitrary arrests and extortion, confiscation of property, anti-Rohingya and anti-Muslim propaganda, rape, forced labor, restrictions on movement, prohibitions on practicing religion, restrictions on education. Where in this case it resulted in the Rohingya ethnic group leaving Myanmar and the Myanmar government was aware of this and it was in accordance with the goal of expelling the Rohingya ethnic group from Myanmar.

And all these elements carried out by the Myanmar government are fulfilled that in this case the Myanmar government also violated article 6 of the statute, the Rohingya Ethnic Issue as a report on human rights violations in the Southeast Asia region written by the Irish Center Human Rights (ICHS) (2010) entitled "Crimes Against Humanity In Western Burma: The Situation of The Rohingyas. The report shows the response of civil society in international organizations that there have been crimes

against humanity against the Rohingya ethnic group in Western Myanmar according to the Rome Statute article 7 with a normative method. The results of the study indicate that there have been crimes against humanity against the Rohingya ethnic group in the form of slavery, deportation or forced repatriation, sexual violence, and torture so that it can be stated that crimes against humanity against the Rohingya in western Burma are international crimes so that they are worthy of being called a case of genocide. In addition, the Myanmar government violated article 7 of the Rome Statute, in this case the crimes against humanity experienced by the Rohingya ethnic group in the form of forced expulsion or transfer of population (crimes against humanity of deportation or forcible transfer of population). Crimes Against Humanity of Deportation or forcible transfer of population in article 7 paragraph 2 letter c of the Rome Statute explains that forced deportation or transfer of population means the forced transfer of people by means of expulsion or other coercive measures from the area where they legally reside without being given a reason permitted by international law. The word forced here is not only limited to physical coercion, but can be in the form of threats of violence or that can cause psychological pressure. In addition, it also revokes the Rohingya citizenship rights. The peak of discrimination received by this ethnic group was when this ethnic group was removed from the law (Rahmi & Rahmiati, 2022).

Myanmar citizenship in 1982. This citizenship law recorded 135 ethnic groups that were automatically recognized as Myanmar citizens and the Rohingya ethnic group was not included in the 135 ethnic groups. As a result of this elimination, the Rohingya ethnic group did not receive basic rights as Myanmar citizens. What is even sadder is that this discriminatory treatment was not only carried out by the government but also by pro-government Myanmar citizens, who believe that the Rohingya ethnic group is not part of Myanmar. So based on the analysis above, I conclude that the actions taken by the Myanmar government to violate human rights in the Rohingya case include genocide and crimes against humanity. Which arbitrary actions of the Myanmar government against the Rohingya ethnic group will be resolved through accountability under international law.

The genocide against the Rohingya ethnic group in Myanmar has very serious and widespread impacts, both for the Rohingya people themselves and for neighboring countries. The severe human rights violations committed by the Myanmar government against the Rohingya have caused them to lose their homes, their lives, experience psychological trauma, social fragmentation, discrimination, economic suffering, as well as the loss of identity and human rights. Additionally, neighboring countries such as Bangladesh, Thailand, Malaysia, and Indonesia also feel the impact of the genocide carried out by the Myanmar government (Musfiroh et al., 2024). Tens of thousands of Rohingya have been forced to leave their homes and seek refuge in these countries, which indirectly affects regional stability in these countries.

This genocide has sparked international condemnation and prompted many countries and organizations such as the UN, Amnesty International, and Human Rights Watch to call for accountability and legal action against those responsible. However, efforts to prosecute the perpetrators are often hindered by politics and diplomatic deadlock.

### **3.2. Obstacles to international legal protection for the Rohingya ethnic group**

The state's obligation to punish perpetrators of gross human rights violations has been developed in various international and regional human rights law instruments. Even customary international law expressly prohibits any form of exemption from punishment for gross human rights violations committed systematically. The International Law Commission stated that violations of state obligations that are classified as internationally wrongful acts that include gross human rights violations are also categorized as international crimes (Rizki, 1999). In addition to the 1948 Genocide Convention, the state's obligation to punish perpetrators of gross human rights violations including crimes against humanity can be found in Article 4 of the Convention Against Torture. Basically, the mechanism for punishing perpetrators of crimes against humanity is more emphasized on national courts. The settlement mechanism is usually through the establishment of a special human rights court, either permanent or ad hoc (Waluyo, 2012).

The establishment of the court can be carried out independently by the country concerned or in collaboration with international institutions such as the UN (Sujatmoko, 2004). However, the reluctance of the Myanmar government to resolve the violence against the Rohingya ethnic group has made the case drag on. Article 17 of the Rome Statute states that the jurisdiction of the International Criminal Court applies if there is a lack of national investigation and prosecution. Or the reluctance and inability of the country where the perpetrator or act of human rights violations was committed, to process the violation (Philippe, 2006).

But unfortunately, Article 12 paragraph 2 of the Rome Statute states that a country is declared to accept the jurisdiction of the Court if it has ratified the Statute. This certainly means that the Myanmar government cannot be tried for violations that have been committed because Myanmar is not a country that has ratified any of the regulations on human rights such as the international conventions on civil and political rights, the convention on economic, social and cultural rights and the convention on the elimination of all forms of racial discrimination (Didu, 2008). Therefore, accountability for every violation committed by the Myanmar government is difficult to implement because it is constrained by the ratification status of international human rights agreements. However, seeing the worsening conditions of the Rohingya ethnic group,

resulting in many fatalities, encourages humanitarian intervention. There are two conditions that can urge the importance of humanitarian intervention. First, the responsibility to protect. The large number of victims who died or disappeared is unknown, whether due to deliberate genocide or not. Or because of the deliberate government / state regime that allowed the incident to occur, or even the inability of the state to take action. So that the state fails to uphold its authority (Hartati, 2013).

Second, there are so many victims of ethnic cleansing, whether real, due to murder, or pressure in the form of mass expulsions, or due to acts of terror or rape (Badescu, 2011). The urgency for humanitarian intervention is based on Article 53 of the UN Charter. Given that this will be one of the UNSC's efforts to resolve cases that threaten world order and peace. The humanitarian intervention was submitted through the UNSC with the agreement of 5 Permanent Members of the UNSC and 10 non-permanent Members. However, this effort failed again. Where there are obstacles that cannot be prevented in the humanitarian intervention of the Rohingya tragedy. The PRC as a permanent member of the UNSC filed an objection by using the Right of Veto. Given that the PRC has an interest in protecting Myanmar as an export and import market, especially gas and oil with the RCC. The UN has repeatedly strongly criticized the Myanmar government to immediately end the violence that occurred. However, this was not responded to well by the Myanmar government and until now there has been no attempt to resolve it.

#### 4. CONCLUSIONS

- 1) That based on the analysis of the facts that occurred in the case of the Rohingya Myanmar, the actions taken by the Myanmar government are violations of human rights in the Rohingya case, including the crime of genocide and also crimes against humanity. Which arbitrary actions of the Myanmar government against the Rohingya ethnic group will be resolved through accountability according to international law.
- 2) The non-recognition of the Rohingya ethnic group as part of the list of ethnic groups in Myanmar is an attempt to eliminate an ethnic group that has existed in the region since the 7th century. This discrimination was even followed up by the revocation of citizenship status for the Rohingya ethnic group. The efforts made by the Myanmar government can be categorized as a systematic effort to eliminate a particular ethnic identity. What is more worrying is the alleged physical confrontation in the form of a military operation that allegedly killed hundreds of innocent civilians. The physical confrontation that occurred triggered a wave of Rohingya ethnic refugees to several countries. As part of the nation's citizens, Myanmar certainly has international obligations that must be fulfilled. The country cannot deny international law that has been recognized, adopted, and practiced in

various countries. As a sovereign country, Myanmar does have the right to resolve its domestic problems through the legal mechanisms it has. However, instead of providing protection, Myanmar has ignored genocide and other human rights violations. Myanmar continues to receive criticism from the international community to immediately resolve the violations that have occurred. Until finally the UN tried to carry out humanitarian intervention

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