

CHAPTER I

INTRODUCTION

1.1. Background

In international humanitarian law there are several basic principles. One of the basic principles of international humanitarian law is the principle of humanity. The principle of humanity is a fundamental principle contained in international humanitarian law.¹ According to this humanitarian principle, the establishment of international humanitarian law is due to the importance of upholding human values in any situation and condition, including in situations of armed conflict. This humanitarian principle is used as a guideline so that all parties who have conflicts do not commit violence and must prioritize humanity.

Since the 21st century until now, the humanitarian crisis is an issue that has become a major challenge for all countries and the international community. At this time, countries that adhere to the principles of democracy have upheld the values contained in Human Rights. One of the countries that is on the way to democracy is Myanmar. Until now, Myanmar is experiencing a humanitarian crisis due to the conflict between

¹ Herman Suryokumoro, et al, *Hukum Humaniter Internasional (Kajian Norma dan Kasus)*, Cetakan 1, UB Press, Malang, 2020, h. 56.

the Myanmar state government with the Rohingya ethnic group in the Northern Rakhine region. The Rohingya are often victims of violence by the Myanmar government.

According to Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, acts of violence committed by the government of Myanmar against the Rohingya ethnic group are considered to lead to the crime of genocide because the actions taken by the government of the Myanmar state are intended to destroy in whole or in part a national, ethnic, racial or religious group belonging to the Rohingya ethnic group.² The conflict that occurred between the Myanmar government and the Rohingya ethnic group that caused the humanitarian crisis is considered to be among the most serious types of international crimes when viewed from the elements of crimes contained in the International Criminal Court regarding the crime of genocide. The forms of violence committed by the Myanmar government against the Rohingya ethnic group include refusing to grant citizenship to the Rohingya, restricting the Rohingya's freedom of movement, restricting activities for the Rohingya in the fields of education and the economy, detaining and torturing the Rohingya and harassing women.

In addition, the Myanmar government has also committed violations of civil rights, where the role of the government and other state institutions in civil rights should be to be able to provide protection of the right to

² Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

freedom of every individual. The protection in question is the protection of all individuals from acts of violation committed without reason as well as the protection of political rights from all forms of discrimination in the life of the state.³ Civil rights are natural rights that are possessed by all human individuals from birth, including the Rohingya ethnicity. The Rohingya actually also have civil rights, but their civil rights are not protected by the government of Myanmar as the country it occupies. Through the humanitarian crisis that has occurred, it can be seen that the Myanmar government is considered to have discriminated against the Rohingya ethnic group, so in this case it can be concluded that the Myanmar government cannot provide the same protection before the law for the Rohingya ethnic group.

The background of the humanitarian crisis carried out by the Myanmar government against the Rohingya ethnic group is because the Rohingya ethnic group is considered illegal migrants from Bangladesh, commonly known as the Bengali tribe. Regarding the refusal to grant citizenship to the Rohingya ethnic group and the non-recognition of the Rohingya as Myanmar citizens regulated in the Burma Citizenship Law of 1982, Chapter II Article (3) and (4) regarding Citizenship, which reads:

“(3) Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period prior to 1185 B.E., 1823 A.D. are Burma citizens.”

“(4) The council of State may decide whether any ethnic group is

³ Ipung Pramudya Setiawan dan Made Selly Dwi Suryanti, “Keterlibatan ASEAN dalam Menangani Konflik Myanmar (Studi Kasus: Konflik Etnis Rohingya 2017-2019)”, *Jurnal Politik dan Pemerintahan*, Vol. 1, No.2, 2021, h. 91.

national or not.”

In the aforementioned Law, it has been stated that the Myanmar government only recognizes that ethnic minorities who become citizens of Myanmar are only ethnic groups that have ancestors and have lived in Burma since 1923. As a result of the non-recognition of the Rohingya ethnicity by the Myanmar government in accordance with the provisions of the Law, it resulted in the violation of Human Rights by the Myanmar government because the Rohingya ethnic group is considered to have no citizenship so that they do not receive protection from a state. The law has received a lot of criticism because the Myanmar government is considered to have treated the Rohingya apartheid system. The absence of an effective legal rule to provide legal protection regarding the granting of citizenship to a person has resulted in the Rohingya being without citizenship until now. The protection that can be given to the stateless Rohingya can be a race to the Article 15 Universal Declaration of Human Rights 1948 in which it has been recognized and stated that all individual human beings, anywhere in the world, must have a legal bond of citizenship with a country.⁴

The lack of citizenship status and the occurrence of violence in the form of oppression, torture and murder by the Myanmar government against the Rohingya ethnic group led to massive displacement by the Rohingya ethnic group to several countries such as Bangladesh, Thailand, Malaysia,

⁴ Ni Nyoman Sintya Dewi, Putu Tuni Cakabawa Landra, I Gde Putra Ariana, “Perlindungan Hukum Warga Rohingya Terkait dengan Konflik di Myanmar Berdasarkan Hukum Internasional”, *Fakultas Hukum Universitas Udayana*, 2018, h. 11-12.

and Indonesia. The massive displacement carried out by the Rohingya ethnic group to several countries has had a considerable impact on several countries that are used as refugee sites from all aspects. The act of evacuation carried out by the Rohingya to other countries to get a place to shelter can clearly harm other countries that are used as their refuge. Regarding the displacement by the Rohingya ethnic group which has caused a lot of harm to other countries, there is actually an international security organization that can help solve this problem, namely UNHCR.

The United Nations High Commissioner for Refugees (UNHCR) is an international security organization that has the task of providing all forms of protection and assistance to asylum seekers and refugees. In the UNHCR Statute of 14 December 1950, it has been established that UNHCR has the primary function of being able to provide international protection under the auspices of the United Nations to asylum seekers and refugees within the scope of this statute. In addition, UNHCR also has a function to find solutions to solve problems regarding refugees. The role of the international security organization UNHCR in handling cases of displacement by the Rohingya can be carried out based on the mandate mandated by the United Nations and in accordance with Article 8 of the UNHCR Statute which provides full international protection to all refugees. There are 4 important roles that UNHCR can play, namely as initiator, facilitator, conciliator, and determination.⁵

⁵ *Ibid.*

If the humanitarian crisis carried out by the Myanmar government against the Rohingya continues to occur and cannot be stopped, then the international community can work through the United Nations with the first step using peaceful means. However, if peaceful means do not succeed in getting the Myanmar government to stop committing violence against the Rohingya, then action under Chapter VII of the UN Charter which governs the UN's ability to use military force will be taken.

In order not to fail again in dealing with humanitarian crises and to uphold human values around the world, UN countries have formed a commitment to prevent and minimize crimes against humanity, genocide, war crimes, and ethnic cleansing. The commitment produced by the UN countries is in the form of a concept called responsibility to protect (R2P). The principle of responsibility to protect (R2P) is a form of global political commitment created with the aim of being able to protect all people of the world who are most vulnerable to the most cruel international crimes such as war crimes, crimes against humanity, genocide, and ethnic cleansing.⁶

Responsibility to protect (R2P) is one of the alternatives that can be taken to solve the problem of the Rohingya ethnic group in Myanmar. Although the humanitarian crisis carried out by the Myanmar government against the Rohingya ethnic group is considered a gross human rights violation, until now there has been no sign of resolution through the ICC

⁶ Umar Suryadi Bakry, *Hukum Humaniter Internasional Sebuah Pengantar*, Cetakan I, Prenadamedia Group, 2019, h. 167.

(International Criminal Court). Actually, the problem between the Myanmar government and the Rohingya ethnic group can be resolved through the ICC (International Criminal Court) if the Myanmar state meets the requirements, namely that the Myanmar state must ratify all international agreements on human rights. However, the Myanmar state did not ratify all international treaties on human rights, so in this case the Myanmar state is not eligible to resolve the problem through the ICC (International Criminal Court).

In addition, the problems experienced by the Rohingya ethnic group are different from the problems of other countries that can be solved through the Ad Hoc International Criminal Court and the International Criminal Court (ICC). For example, the conflict that occurred between ethnic Bosnians and ethnic Serbs. The conflict that occurred between the two ethnicities began with the desire of the Bosnian people to be able to be independent from Serbian territory. Bosnia, which is part of the territory of Yugoslavia, is trying to be able to be independent of itself because the Yugoslav state has fallen and is divided into several countries. However, this was opposed by the entire Serb community because they still wanted Bosnia to be part of the territory of the Serbian state.

This is because ethnic Serbs want to control Bosnian territory with the aim of utilizing existing natural resources. The conflict that occurred was a local conflict that became an inter-ethnic conflict. Then, this conflict grew larger because there were various efforts by ethnic Serbs directly supported by the army and its president to carry out ethnic cleansing of

ethnic Bosnians. The humanitarian conflict between these two ethnicities is also inseparable from the type of humanitarian violation, especially against international humanitarian law. The violations committed by ethnic Serbs are in direct contradiction to the humanitarian principles enshrined in the Geneva Conventions.⁷

After seeing the incident, the UN and NATO finally planned an attack to stop Serbian atrocities against Bosnia. In the end, the conflict between Serbia and Bosnia ended peacefully through negotiations held at Wright-Patterson Air Base in the Dayton, Ohio area on November 21, 1995. These negotiations resulted in an agreement called the Dayton Agreement. The Dayton Agreement was inaugurated in Paris on December 14, 1995. The contents of the Dayton Agreement stated that the division of Bosnia's territory was divided into two countries, namely the Republic of Spraska and the Federation of Bosnia-Hezgovina. As a result of the Acts that violate humanity in the former Yugoslavia since 1991, based on the Statute of The International Tribunal for Former Yugoslavia (ICTY Statute), The International Criminal Tribunal for Former Yugoslavia (ICTY) was established which originated from UN Security Council Resolution 827. ICTY is located in The Hague, Netherlands.⁸

As a result of the establishment of the ICTY, former President of the Federal Republic of Yugoslavia, Slobodan Milosevic, who helped Serbia to

⁷ Mumtazinur, "Kejahatan Terhadap Kemanusiaan dan Pelanggaran Hukum Humaniter Internasional (Konvensi Jenewa 1949) Studi Kasus: Pelanggaran HAM Berat untuk Bekas Negara Yugoslavia", *Jurnal Dusturiah*, Vol. 8, No. 2, 2018, h. 121.

⁸ Tolib Effendi, *Hukum Pidana Internasional*, Cetakan I, Penerbit Pustaka Yustisia, 2014, h. 188.

cleanse ethnic Bosnians, began his trial in The Hague on February 12, 2002, in what was the largest war crimes trial after Germany's Nuremberg Trials.⁹ In addition to the formation of the ICTY, the mass killings that occurred in Bosnia also succeeded in creating a global politics of commitment that is often referred to as the principle of responsibility to protect (R2P) as a result of a number of failures of the international community to protect people from mass crime.

From the background described above, the author is interested in conducting research by analyzing and studying the regulation and implementation of R2P for the international community as well as the ability of R2P in providing protection for the Rohingya ethnic group in Myanmar. The author is interested in conducting research on the regulation of principles responsibility to protect (R2P) because in previous research there has been no discussion of the regulation or legal basis that can be used as a guideline regarding the principle of responsibility to protect (R2P). This can happen because this principle has not been expressly regulated, so the regulation or legal basis must be linked to the existing legal arrangements or bases in international law. This research is important to do because in Global Centre for The Responsibility to Protect, this problem is a case that continues to this day. In addition, the author is also interested in conducting research on the principles of responsibility to protect (R2P) because this principle can protect the community from various forms of crime, especially

⁹ *Ibid*, p. 203.

mass crime.

The obligation to provide protection to the community is owned by all UN member states and the international community. With the protection support that can be obtained from UN member states and the international community, it is hoped that it can minimize the occurrence of violations of all kinds of serious human rights. The principle of responsibility to protect (R2P) means “responsibility to protect”, which means that it allows the use of force as a last resort if a country is visibly failed to protect its people from various types of gross human rights violations.¹⁰ The advantage of this responsibility to protect (R2P) principle is that this principle can be applied at any time, both in times of armed conflict and in times of peace when a country is considered unable to protect its own people. Although in current practice the application of the principle of responsibility to protect (R2P) is still very limited, the United Nations continues to make efforts to continue to operationalize this principle in order to protect the entire international community from all kinds of crimes of mass atrocities.

Therefore, this study is very relevant to analyze the use of the principle of responsibility to protect (R2P) in the Myanmar state to protect the Rohingya ethnic group from mass crimes committed by the Myanmar government. This is the benchmark of the author's interest in raising the principle of responsibility to protect (R2P) as research material to be analyzed and studied, considering that the conflict between the Myanmar

¹⁰ Umar Suryadi Bakry, *Op.Cit.*, p. 169.

government and the Rohingya ethnic group has not been resolved through the ICC (International Criminal Court) or the Ad Hoc International Criminal Court, which is outlined in the form of a thesis using the title “**A STUDY ON THE USE OF THE RESPONSIBILITY TO PROTECT (R2P) PRINCIPLE TOWARDS THE ROHINGYA ETHNICITY IN MYANMAR**”.

1.2. Problem Formulation

From the description of the background of the problem as explained above, the author formulates the problems that will be raised in this study as follows, namely:

1. What form of responsibility to protect (R2P) can be done for cases in Myanmar?
2. What is the form of accountability of the Myanmar state to the Rohingya?

1.3. Research Objectives

Based on the formulation of the problem that has been described above, the purpose of writing this thesis is to:

1. To find out the form of responsibility to protect (R2P) that can be done for cases in Myanmar.
2. To find out the form of accountability of the Myanmar state towards the Rohingya ethnicity.

1.4. Research Benefits

1.4.1. Academic Benefits

The results of this research are expected to contribute to science, especially legal science regarding the implementation of R2P which is studied in the International Humanitarian Law course. In addition, the results of this research are also expected to be used as reference sources and input for various types of further research related to R2P to be studied more deeply.

1.4.2. Practical Benefits

The results of this research are expected to be used as input for academics and the public who want to learn about the implementation of R2P. In addition, the results of this research are also expected to be used as problem-solving materials in an effort to solve various conflicts and international crimes.

1.5. Research Authenticity

In this case, the author uses previous research as a reference to conduct research. After looking at previous research, the author did not find a study that had the same title as the author's research title. However, the author raises several studies to be used as reference sources to enrich the study material in the author's research. The following is a previous research raised by the author.

No.	Identity of the Author and Title of the Research	Research and Discussion Results	Differences in Legal Writing
1.	Setiyani & Joko Setiyono (2020) Penerapan Prinsip Pertanggungja waban Negara Terhadap Kasus Pelanggaran HAM Etnis Rohingya di Myanmar	A country must be able to guarantee the fulfillment of human rights for its citizens without discrimination. The discrimination that has been carried out by the Myanmar government against the Rohingya ethnic group is considered to have led to acts of genocide which include gross human rights violations. The state of Myanmar has an obligation to protect and be responsible for crimes that befall its citizens. The form of responsibility that must be carried out to stop the crime of genocide in Myanmar is by carrying out stoppage actions, after the stoppage action is successfully carried out, human rights enforcement must also be carried out. Human rights enforcement can include investigations, prosecutions and sentencing. The sovereignty of a country cannot be used as a benchmark for the Myanmar state to be free from all forms of demands for human rights violations that occur against the Rohingya ethnic group. The Myanmar state can be prosecuted and held accountable for human	In this study, the author focuses more on the discussion of Human Rights. Meanwhile, the legal writing that will be prepared will focus more on the accountability of the Myanmar state to the Rohingya ethnic group.

No.	Identity of the Author and Title of the Research	Research and Discussion Results	Differences in Legal Writing
		rights violations for committing wrongful actions.	
2.	The Great God of Darkness (2021) Pemenuhan Hak Asasi Manusia Kepada Etnis Rohingya di Myanmar	Accountability for all the abuses that have been committed by the Myanmar state government is very difficult to implement. This is because the Myanmar state has not ratified all international treaties on human rights. Seeing the condition of the Rohingya ethnic group that is getting worse and leaving many casualties, this can encourage humanitarian intervention. There are 2 ways that can urge humanitarian intervention. the first is the responsibility to protect and the second is based on Article 53 of the UN Charter considering that this is one of the efforts of the UN Security Council in resolving cases that can threaten world order and peace. However, the second method failed to be implemented because the PRC as a permanent member of the UN Security Council objected using the veto.	In this study, the author mentions the principle of responsibility to protect (R2P) to urge humanitarian intervention, but the author does not discuss this principle more specifically. Meanwhile, the legal writing that will be prepared will focus and enrich the discussion on the principle of responsibility to protect (R2P).

No.	Identity of the Author and Title of the Research	Research and Discussion Results	Differences in Legal Writing
3.	Fatma Putri Fadilah, Moh. Akmal Taris Hakim, Fyo Akbar Putra Frefy, Ridha Wahyuni (2024) Peran Perserikatan Bangsa-Bangsa dalam Penyelesaian Pelanggaran HAM Terhadap Etnis Rohingya di Myanmar: Perspektif <i>Responsibility to Protect Concept</i>	1. Responsibility to Protect (R2P) is an international principle established with the aim of preventing various crimes of a serious nature such as mass destruction, crimes against humanity, war crimes, and ethnic cleansing, by stipulating that all countries are obliged to protect their citizens from all forms crime. If this fails, then this responsibility shifts to the international community. The case of human rights violations against the Rohingya in Myanmar, where the Myanmar government is directly involved in discriminatory treatment and violence, shows that the Myanmar state has an inability to resolve conflicts internally. Thus, this encourages all ASEAN member countries, including Indonesia, to carry out diplomatic interventions, although until now it has not been successful, because the principle of non-intervention by ASEAN limits the action directly. 2.	In this study, the author only focuses on discussing the United Nations which ordered the Myanmar state to restore the rights of the Rohingya ethnicity. Meanwhile, the legal writing that will be prepared will focus on the form of responsibility to protect so that the Myanmar state can be held accountable to the Rohingya ethnic group.

No.	Identity of the Author and Title of the Research	Research and Discussion Results	Differences in Legal Writing
		The United Nations (UN) in implementing the responsibility to protect must be through the decision of the UN Security Council. In 2017, the UN Security Council issued a presidential statement in which it was explained that the UN Security Council rejected the human rights violations in Rakhine and ordered the Myanmar government to make various efforts to restore the rights of the Rohingya ethnic group that have been violated, one way that can be done is to return the Rohingya from various refugee sites.	

Table 1 Previous Research

Based on the description in the table above, it can be concluded that there is a similarity in the focus of the topic to be studied, namely the implementation of the principle of responsibility to protect. However, there are fundamental differences regarding the discussion of the principle of responsibility to protect. In the writing of the law to be prepared, the principle of responsibility to protect will be clearly described how it is implemented in the case of the Myanmar state. In addition, the legal writing that will be prepared will also focus on discussing the form of

accountability of the Myanmar state to the Rohingya ethnic group. This difference is also a novelty and research gap in this study, so this research is expected to complement the results of previous related research.

1.6. Research Methods

1.6.1. Types of Research

The type of research in this study is normative juridical which in other words is a type of doctrinal law research. This legal research uses secondary data, namely data obtained from literature materials.¹¹ This research method uses qualitative research methods. According to Strauss and Corbin in Creswell J, “qualitative research is a type of research that produces discoveries that cannot be achieved or obtained using statistical procedures or other means of quantification or measurement.”¹² Qualitative research methods are general, flexible and dynamic. In the qualitative method, the researcher will process a data and explain it based on existing theories to produce a new theory that strengthens existing theories.

1.6.2. Research Approach

1. Statute Approach

¹¹ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Cetakan IV, Ghalia Indonesia, Jakarta, 1990, h. 9-10.

¹² John W. Creswell & J. David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, Cetakan VI, SAGE Publications, Inc, 2023, h. 183.

This approach is carried out by examining all applicable regulations or laws and regulations and related to the legal issues to be researched by the researcher.

2. Conceptual Approach

This approach is carried out by paying attention to the doctrines in the science of International Law regarding the concept of Human Rights inherent in the human individual.

3. Case Approach

This approach is carried out by conducting a case study on the concept of Responsibility to Protect which is the main material that is the focus to be discussed in this study.

1.6.3. Legal Materials

The sources of legal materials used in this study use primary data sources, secondary data sources and tertiary data sources.

1. Primary Legal Material

Primary legal materials are legal materials that are sorted according to hierarchy and have authoritative properties which means they have authority. The primary legal material in this study is:

- a. Burma Citizenship Act 1982
- b. Rome Statute of the International Criminal Court 1998
- c. Universal Declaration of Human Rights of 1948.

- d. Constitution of Myanmar 2008.
- e. 1948 Genocide Convention.
- f. 1949 Geneva Conventions and Their Additional Protocols.
- g. Hague Convention II 1899 (Hague Conventions II 1899).
- h. 1951 Convention and 1967 Protocol.

2. Secondary Legal Materials

Secondary legal materials are a set of materials that have a very close relationship with primary legal materials and can help analyze and understand primary legal materials.¹³ The secondary legal material in this research law is:

- a. Books that are used as a reference;
- b. The results of scholars' scientific work;
- c. Research results.

3. Tertiary Legal Materials

Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials.¹⁴ The tertiary legal materials in this study are:

- a. Great Dictionary of the Indonesian Language;
- b. English Dictionary;
- c. Legal Dictionary.

¹³*Ibid*, p. 12.

¹⁴ *Ibid*.

1.6.4. Data Collection Methods

In the collection of legal materials, researchers get accurate data obtained after collecting primary data sources, secondary data sources and tertiary data sources which are then adjusted to the research approach. The primary data collection technique, secondary data and tertiary data used in this study is a document study. The researcher collected data by examining various documents related to research topics such as law books, articles, journals and tracts.

1.6.5. Legal Material Analysis Methods

Legal material analysis is a process that is carried out to regulate the order of legal materials, organize them into categories, basic units of description, and patterns. Thus, the legal material will be easier to read until it is concluded. The analysis technique that can be used is the descriptive analysis technique, where this technique can be done by collecting factual legal materials and then describing them. Legal materials can come from various information that has been obtained from the results of the study of various documents through several stages. After collecting legal materials and recording legal materials, the researcher will conduct an interaction analysis consisting of the reduction of legal materials, presentation of legal materials and verification.¹⁵ The analysis of

¹⁵ Bambang Waluyo, *Penelitian Hukum dalam Praktek*, Sinar Grafika, Jakarta, 2002, h. 1000.

legal materials from this research will take place at the same time as the process of collecting legal materials and is also carried out when legal materials have been collected.

1.6.6. Writing Systematics

This research is entitled “**Responsibility to Protect (R2P) Principle Effectuation: A Rohingya Ethnicity Case in Myanmar**”. In this study, it consists of several chapters which will be discussed as follows:

The first chapter, contains an introduction. In this first chapter, we will provide a general and comprehensive overview of the main problems that will be discussed in the research paper. The first chapter consists of several sub-chapters, namely the background of the problem, the formulation of the problem, the purpose of the research, the benefits of the research, the authenticity of the research, the methods that will be used in writing this research, the systematics of writing, and the literature review. This is intended to provide readers with an understanding of the outline of the main issues that will be discussed in writing this research.

The second chapter contains a discussion of the formulation of the first problem, namely the form of the implementation of responsibility to protect (R2P) that can be carried out in cases in Myanmar. In the second chapter, it will be divided into two sub-

chapters of discussion, namely the first sub-chapter will discuss the form of obligation to protect citizens carried out by the Myanmar state, while the second sub-chapter will discuss the use of humanitarian intervention by the international community against the Myanmar state under the principle of responsibility to protect (R2P).

The third chapter contains a discussion of the formulation of the second problem, namely the form of responsibility of the Myanmar state for the Rohingya ethnicity. In this third chapter, we will discuss the efforts of the Myanmar state that must carry out state accountability to restore the human rights of the Rohingya ethnic group that have been deprived so far.

The fourth chapter contains a concluding chapter consisting of two sub-chapters, namely the first sub-chapter containing conclusions and the second sub-chapter containing suggestions on the subject matter that has been raised and discussed. In the last chapter of the systematics of writing this research, the conclusion of the discussion that has been described previously will be described, and then appropriate suggestions will be given according to the problems that become problematic in the discussion. The purpose of giving this advice is to be able to provide benefits for readers and interested parties. This concluding chapter is the final part of this

writing as well as an outline of the answers to the issues raised in this writing.

1.7. Literature Review

1.7.1. Human Rights Overview

According to John Locke, Human Rights are all rights that have been given directly by God Almighty as something of a natural nature. The core principles of human rights are universality, interdependence and indivisibility, as well as equality and non-discrimination as stated in the Universal Declaration of Human Rights (UDHR).

The United Nations established the Commission on Human Rights and held its first session in January 1947. On December 10, 1948, the United Nations General Assembly for the first time produced a Draft Charter of Human Rights which came to be known as the Universal Declaration of Human Rights. Thus, December 10 every year is used as a human rights commemoration day.

The United Nations established the Universal Declaration of Human Rights through various forms of consideration. The United Nations emphasizes that human rights need protection under the rule of law so that all human beings can be protected from all forms of violence, torture and oppression. With the establishment of the Universal Declaration of Human Rights, the United Nations has

determined to promote social progress and a better standard of living in wider freedom in order to eradicate all forms of human rights issues, both at the national and international levels.

Human rights issues at the international level have become a concern for various other countries. This is due to the connection of the commitments that are already contained in the Universal Declaration of Human Rights. This commitment can help countries to form the concept of responsibility to protect (R2P) which is used as a human rights enforcement instrument to handle cases of international human rights violations and other types of gross human rights violations.

The Responsibility to Protect (R2P) was established by the United Nations to prevent cases of gross human rights violations such as mass killings, ethnic cleansing, crimes against humanity, and war crimes. The principle of responsibility to protect (R2P) explains that every country is obliged to protect its citizens from the four types of crimes mentioned above. The principle of responsibility to protect (R2P) was first formulated by the International Commission on Intervention and State Sovereignty (ICISS) and pioneered by the Canadian state in 2000.

Article 5 of the Rome Statute of The International Criminal Court 1998 has also been described about the meaning 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,”*¹⁶

Article 5 of the Rome Statute of 1998 means that gross human rights violations include crimes against humanity, crimes of genocide, crimes of aggression, and war crimes. These human rights violations are often directed at ethnic minorities, who from the beginning to the end have always never received good treatment within the territory of the country they occupy.¹⁷

Human Rights apply to all human beings without exception, including refugees. Refugees are people who leave their place of residence or country because of fear of persecution, conflict or it can be due to natural disasters. Refugees also have the same human rights as other human beings where these rights should not be reduced or even ignored. The protection of refugees is regulated in the Universal Declaration of Human Rights contained in Article 12, Article 13, Article 14, Article 22, and Article 25.

¹⁶ Rome Statute of 1998.

¹⁷ Dewa Gede Sudika Mangku, “Pemenuhan Hak Asasi Manusia kepada Etnis Rohingya di Myanmar”, *Perspektif Hukum*, Vol. 21 No. 1, 2021, h. 4.

1.7.2. Overview of the 1951 Convention and the 1967 Protocol

Concerning the Status of Refugees

To protect all refugees around the world, the United Nations established a United Nations High Commissioner for Refugees; UNHCR). UNHCR was established on December 14, 1950 with the aim of being able to protect and provide assistance to refugees all over the world. UNHCR is governed by the 1951 Convention and the 1967 Protocol. The main foundation for international protection of refugees today is contained in the UN Convention relating to the Status of Refugees adopted in 1951. This Convention came into force on April 22, 1954, and only one amendment was made which was realized along with the existence of an additional Protocol in 1967, where the content of the Protocol contained the elimination of geographical and time limitations previously contained in the 1951 Convention. The 1951 Convention, a legal instrument created after the outbreak of World War II, initially only imposed restrictions on refugees who left their countries of origin due to various forms of events that occurred before January 1, 1951 in European territory. The 1967 Additional Protocol restricts the existing Limitation and makes the 1951 Convention more universal in scope.

The types of refugees can be divided into 2 types. The first is evacuation that occurs as a result of a natural disaster. In principle, the evacuation efforts carried out are still protected by their country

of origin to leave their country to save their lives, and refugees who carry out this evacuation can still ask for help from their country of origin. The second is the displacement that occurs as a result of a man-made disaster. In principle, this evacuation is deliberately planned to cause refugees to leave their country of origin to avoid a demand (persecution) from their country of origin. This evacuation was deliberately planned because there were political reasons that caused the refugees to be forced to leave their country of origin, so that this caused the refugees to no longer be able to get protection from the government of their country of origin. Of the two types of refugees above, evacuations that occur as a result of natural disasters have not been regulated and are not protected by International Law, but those that have been regulated and protected by International Law as Refugee Law are the second type of refugees, namely refugees that occur as a result of disasters that are engineered and made by humans themselves.

In addition to being guided by the 1951 Convention and the 1967 Protocol on the protection of refugees, the United Nations is also guided by the Fourth Geneva Convention of 1949 and its Additional Protocols, which specifically regulate “Humanitarian Refugees”. In the Fourth Geneva Convention of 1949, civilians have the right to be protected and treated humanely and fairly, just like soldiers who are wounded or sick as stated in the first convention.

Thus, civilians who are not involved in armed conflict have the right to protection, just like refugees.

Not all countries in the world have ratified the 1951 Convention and the 1967 Protocol on the status of refugees. For example, the evacuation efforts carried out by the Rohingya ethnic community. There are four countries that are used as destinations for evacuation. The four countries are Bangladesh, Thailand, Malaysia and Indonesia. Of the four countries that have been used as destinations for the evacuation, none have ratified the 1951 Convention and the 1967 Protocol on the status of refugees. The four countries have various different rules regarding the reception of refugees in their countries, including:

a. Bangladesh

The state of Bangladesh does not yet have a national regulation that specifically regulates refugees and asylums. Nevertheless, the state of Bangladesh has participated in international forums on refugees and migration and has sought to enforce refugee norms in various ways. The state of Bangladesh asked the international community to pressure the Myanmar state to support the repatriation of refugees of the Rohingya ethnic community. In March 2019, the Bangladeshi government had stated that it would not accept and accommodate the arrival of refugees from the Rohingya ethnic

community. The Supreme Court of Bangladesh has committed to protecting refugees by adhering to the principle of non-refoulement. The state of Bangladesh has received direct but limited assistance from the doctrine of responsibility to protect (R2P).

b. Thailand

Traditionally, Thailand has a good policy as it has hosted about 1.2 million refugees over the past three decades. Thailand's rules on refugees can include granting legal status, protection and humanitarian assistance. The Thai government implements a separate process to be able to grant legal status to refugees. The Thai government has also passed a law that addresses non-refoulement, which prohibits the country from forcibly returning refugees to their countries of origin. The Thai state must give permission to UNHCR to make determinations regarding the refugee status of the Rohingya ethnic community. In addition, the Thai state must also provide protection, support and humanitarian assistance to the refugees of the Rohingya ethnic community.

c. Malaysia

Refugees who enter Malaysia without using official documents will be considered as illegal migrants. Illegal migrants who can enter Malaysia without permission can be

detained or even expelled directly from Malaysia. The Malaysian government has mandated UNHCR to conduct status determinations and complete the refugees' documents. Malaysia does not recognise the refugee status that has been granted by UNHCR. Refugees of the Rohingya ethnic community cannot be granted legal employment within Malaysia. Nevertheless, the Malaysian government continues to carry out its responsibility to protect the human rights of the Rohingya ethnic group refugees.

d. Indonesia

Indonesian state regulations for refugees of the Rohingya ethnic community are listed in Presidential Regulation (Perpres) Number 125 of 2016 concerning the Handling of Refugees from Abroad. This Presidential Regulation regulates the placement of refugees where refugees of the Rohingya ethnic community are placed in special refugee shelters. In the Presidential Decree, the placement of refugees in shelters must pay attention to aspects of age, family, nationality, gender, race, ethnicity and religion. Refugees who have a history of infectious and dangerous diseases should be referred to a hospital or a better health care facility. Refugees with disabilities may be given a place outside the refugee shelter. The Indonesian state is making efforts to help the refugees of the Rohingya ethnic community by providing

humanitarian assistance, conducting diplomatic efforts and helping the difficulties experienced by the refugees of the Rohingya ethnic community. The Indonesian state is also bound by the principle of non-refoulement which means that the Indonesian state cannot repatriate refugees if their safety is threatened in their home country.

1.7.3. Overview of the Responsibility to Protect (R2P) Principles

1.7.3.1. Definition and Scope of R2P

The principle of responsibility to protect (R2P) arises because of the reaction of the international community which is increasingly dilemma because it is concerned about gross human rights violations that occur on the one hand, but on the other hand must also respect the fact of sovereignty integrity and the principle of non-interference in domestic affairs owned by a country. The principle of responsibility to protect (R2P) was born because there is a dilemma between not acting or acting against international law, between non-interference norms and the prohibition of using power owned by one party that requires the implementation of intervention to protect humanity on the other side.¹⁸

The principle of responsibility to protect (R2P) was

¹⁸ *Ibid.*

born and formed during the 2005 World Summit. The summit was held in September 2005, in New York. The result of the Summit at that time was that the international community agreed to establish a principle called “Responsibility to Protect” which was affirmed in Paragraphs 138, 139, and 140 of the 2005 World Summit Outcome Document.

The principle of responsibility to protect (R2P) is accepted by the international community at large. Since the issuance of the World Summit Outcome Document 2005, the concept of responsibility to protect (R2P) has continued to develop and gain more traction.

Responsibility to protect (R2P) is a legally binding framework, but its regulation is based on applicable international law. As a first example, when a country is faced with the crime of genocide, the legal basis for the crime of genocide has been stated in the 1948 Convention on the Prevention and Punishment of Genocide which states that the state is required to be responsible for preventing and punishing everything related to the crime of genocide. The second example is that a country has an obligation to respect and ensure respect for international humanitarian law (IHL) that has been set out in the 1949 Geneva Convention and the

Additional Protocols. This obligation is very relevant to the responsibility for war crimes contained in the responsibility to protect (R2P). The third example is that although crimes against humanity are international crimes defined in the Rome Statute on the International Criminal Court, they do not have their own conventions or treaties defining the responsibility of states in relation to such crimes. However, the elements contained in crimes against humanity such as slavery and torture do have their own conventions.¹⁹ Meanwhile, regarding ethnic cleansing, it is registered as a separate crime which based on the responsibility to protect (R2P) does not have its own legal status in international law or can be said to have existed in a grey area since its first appearance.²⁰

The concept of responsibility to protect (R2P) has a broader and more developed framework than humanitarian intervention. Responsibility to protect (R2P) is a concept that has an understanding that sovereignty is a form of responsibility. This means that all countries have the authority both nationally and internationally to protect their people from all kinds of acts of mass atrocity, which include war crimes, genocide crimes, crimes against humanity, and the mass

¹⁹ Umar Suryadi Bakry, *op cit.*, p. 171.

²⁰ Clotilde Pegorier, *The Legal Qualification of Ethnic Cleansing*, A Thesis for the Degree of Doctor of Philosophy (Ph.D Thesis) at University of Exeter (2010), p. 2.

eradication of an ethnic group.

Responsibility to protect (R2P) can be enforced at any time, both in situations of armed conflict and in times of peace. Responsibility to protect (R2P) can only be carried out when the situation of the community is under threat or suffering from a predetermined crime or is in a state of emergency that cannot be adequately handled by the government of the country concerned.²¹ Responsibility to protect (R2P) only applies to the most serious of crimes. So that any dispute, conflict or violence that does not meet the threshold of the most serious of crimes does not apply to responsibility to protect (R2P).

Responsibility to protect (R2P) is related to international humanitarian law. This is because both are part of an international regime that both have the goal of protecting humanity (humanitarian protection). In addition, both also have the same normative foundation, which is to provide protection for all individuals to reduce human suffering.

Responsibility to protect (R2P) and international humanitarian law have special relevance that can be seen from two aspects. The first aspect is related to the capacity to

²¹ Peter Hilpold (ed.), *The Responsibility to Protect (R2P) : A New Paradigm of International Law*, (Leiden: Koninklijke Brill, NV, 2014), p. 380.

prevent war crimes, and draws a parallel relationship between General Article 1 of the Geneva Conventions and Pillars 1 and 2 of Ban Kim Moon's three-pillar framework that he created related to the responsibility to protect (R2P). The second aspect, the capacity for collective response to war crimes, can be found in the formulation of the three pillars of Ban Kim Moon and in Article 89 of Additional Protocol 1 to the Geneva Conventions.²²

The responsibility to protect (R2P) is not only about war crimes, but also about crimes against humanity and genocide. Crimes against humanity and genocide can be committed at any time outside the context of armed conflict, so in such a situation international humanitarian law cannot provide protection for the victims of such crimes. But it is different in the context of armed conflict. In situations of armed conflict, international humanitarian law provides full protection against war crimes as well as many other protections that are not included in the scope of responsibility to protect (R2P).

Responsibility to protect (R2P) is a political and policy tool that utilizes elements contained in international humanitarian law and international criminal law, but is only

²² Umar Suryadi Bakry, *op cit.*, p. 181.

focused on providing protection to civilians. Some of the important elements that can make responsibility to protect (R2P) and international humanitarian law coexist include a well-developed international criminal regime, crimes of genocide and crimes against humanity.

The development of responsibility to protect (R2P) can provide extra clarity and focus on the obligations of states to determine whether protection is needed for their civilian populations. The development of responsibility to protect (R2P) needs to be implemented in order to re-enforce the existing international humanitarian law framework. A very important first step in protecting civilians is to understand the elements contained in the responsibility to protect (R2P) and international humanitarian law and to understand that the two have differences in their approaches.

1.7.3.2. R2P in International Law

In international law, there is no international treaty that explicitly regulates the responsibility of international organizations or the responsibility of a country to provide protection to civilians experiencing humanitarian crises within a country. Based on existing provisions, it only arises from the results of opinions or views of experts in International Law (doctrine). The doctrine recognizes the

term humanitarian intervention. The scope that has existed in humanitarian intervention is not only to liberate oppressed nations from other nations, but also to end all forms of criminality and murder as well as religious persecution.

The concept of responsibility to protect can actually be seen in the clause contained in the preamble of the Hague II Convention 1899 (The Hague II Convention 1899), namely the Marten Clause. The Marten Clause has codified the principles of human law and requires a public conscience. The Preamble of The Hague II Convention 1899 reads:

*“Until a more complete code of the laws of war issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.”*²³

The Marten Clause was created with the aim of being able to provide an additional form of legal protection, both for individuals and groups, both in times of war and in times of peace. This clause is used as the basis for positive international human rights law. The Marten Clause is considered to be able to shape a direction that can become

²³ Hague Convention II, 1899.

international humanitarian custom and international human rights law, even though the positive principle derived from natural law is considered to be thousands of years old. Many consider that the Marten Clause can be used as an official basis to be able to provide protection for crimes against humanity contained in international law that has been systematized.²⁴

Responsibility to protect (R2P) is a principle that arises as a result of developments that have occurred in the international community, which is actually not a new thing, because this principle actually only has the purpose of being able to provide an affirmation and framework for everything that has been regulated in various international legal instruments, especially related to war crimes), genocide, crimes against humanity, and ethnic cleansing. In its implementation, the responsibility to protect (R2P) is vulnerable to being defeated by the political interests of a country that holds the veto power, resulting in resistance among weak countries. Therefore, it is necessary to create an international legal instrument that was formed with the aim of being able to regulate the criteria for implementing

²⁴ Lily Husni Putri, "Responsibility to Protect Sebagai Doktrin atau Norma yang Berkembang dalam Hukum Internasional", *Kanun Jurnal Ilmu Hukum*, No. 65, 2015, h. 162-163.

responsibility to protect (R2P) which are binding, especially in the third pillar, namely when and how the implementation of the third pillar can be implemented.²⁵

1.7.4. Overview of the Role of the UN in the Implementation of R2P

The United Nations is the largest organization so far in the history of the growth of cooperation between all countries in the world in various sectors of international life. Maintaining international peace and security is closely related to the principle of responsibility to protect.²⁶ The United Nations has an important role in the role of responsibility to protect (R2P), which is clearly stated in the 2005 World Summit Outcome Document in paragraph 139, in which it is stated that the international community can take collective action through the Security Council if a country is deemed to have failed to protect its citizens from the crime of genocide, war crimes, aggression crimes and crimes against humanity. The actions of the UN Security Council in implementing the Responsibility to Protect are contained in the three elements of responsibility to protect (R2P), especially how to take decisive and timely actions,

²⁵ *Ibid*, p. 170.

²⁶ ICISS, "The Responsibility to Protect", *Canada: International Development Research Centre*, 2001.

both in coercive and preventive forms to protect populations that fail to be protected by their own countries.²⁷

In the Third Pillar of responsibility to protect (R2P), it has been stated that in order to protect populations vulnerable to the crimes contained in the responsibility to protect (R2P), the UN can carry out fact-finding missions and may also impose diplomatic sanctions or other means as a last resort if peaceful means are not successfully implemented, including the use of collective force through the authorization of the UN Security Council. In addition, Article 89 of Additional Protocol I also provides legal support for collective action through the United Nations (including the use of force) to address serious violations of the Geneva Conventions and its Protocols. Thus, this can provide a legal basis for the Third Pillar of the formulation of responsibility to protect (R2P), which includes the possible use of force under Chapter VII of the UN Charter.²⁸

The UN can carry out or implement the responsibility to protect (R2P) through the UN Security Council. The steps taken by the UN Security Council in implementing or implementing responsibility to protect (R2P) are carried out through the stages of fact-finding, diplomacy, and military use. The UN Security Council

²⁷ Diazthama Al Insyirah Yuwono, "Penerapan Responsibility to Protect (R2P) oleh PBB dalam Penyelesaian Konflik Kejahatan Kemanusiaan di Xinjiang China: Studi Kasus Etnis Uighur (2015-2019)", *Universitas Hasanuddin*, 2020, h. 45.

²⁸ Umar Suryadi Bakry, *op cit.*, p. 182.

is required to appoint a fact-finding person to investigate and report allegations of violations of international law that occur in countries that are suspected of committing violations. The existence of the mission is expected to provide early warning of the humanitarian crisis that has occurred and be able to negotiate with the leaders of the countries where the crisis occurred to discuss how to resolve the violence that has occurred. Permanent members of the UN organization have a strong position to conduct negotiations. In addition, permanent members of the UN organization can also veto decisions from the responsibility to protect (R2P). If the UN Security Council is unable to take action or decision, then the UN Security Council will be replaced by the UN General Assembly using the Uniting for Peace resolution to follow up on issues that have not been acted upon by the UN Security Council.

1.7.5. ASEAN Rules Overview

1.7.5.1. ASEAN Rules on Human Rights

ASEAN already has the ASEAN Intergovernmental Commission of Human Rights (AICHR) which was established on October 23, 2009 during the ASEAN Summit in Hua Hin, Thailand. In carrying out its duties, the AICHR is required to respect the principles set out in Article 2 of the ASEAN Charter. If examined further, there are actually counter-arguments in its application. On the one hand, the

AICHR acts as a human rights body that has the task of promoting and protecting human rights, on the other hand it must respect the principles embraced by ASEAN, namely, the principle of non-intervention. Therefore, until now the AICHR has a very passive and static position.²⁹

The United Nations provides space for all member states to carry out humanitarian interventions to protect human rights. However, the principle of non-intervention, which has been legalized in the ASEAN Charter, does not provide room for intervention, so it is absolute and rigid. Thus, this has resulted in ASEAN making the principle of equality of sovereignty as the main principle with the characteristic of conducting mutual deliberation as ratified in the ASEAN Charter, by avoiding solving problems through violent means, let alone interfering in the affairs of a country's government. So, this is what makes ASEAN not know the word intervention in resolving regional disputes. Thus, implicitly, member states consider that the best way to resolve is internally or nationally.³⁰

²⁹ Norilla and Eddy Mulyono, *Op.Cit.*, p. 22.

³⁰ Christine Susanna Tjhin, "Menjalin Demokrasi Lokal dengan Regional: Membangun Indonesia, Membangun Asean", *Centre for Strategic and International Studies*, 2005, h. 6.

1.7.5.2. ASEAN Rules on Refugees

So far, ASEAN has not had rules or institutions that deal with refugee problems. Thus, the problem of refugees is delegated to the ASEAN Natural Disaster Relief Coordination Center (AHA Centre). However, so far, the authority of the AHA Centre is only limited to managing natural disasters, so when handling refugees, the agency can only provide assistance limited to humanitarian assistance. As we all know, actually helping refugees is not just about accommodating and providing food. However, helping refugees also means ensuring that the human rights of refugees can be fulfilled and can provide protection for refugees.

Therefore, ASEAN actually needs to form a body to accommodate and protect refugees. If ASEAN has a special body that accommodates refugees, then ASEAN can coordinate on handling the refugee situation in ASEAN member countries. In addition, ASEAN can also collaborate with UNHCR so that the handling and protection of refugees in ASEAN member countries can be recognized globally.

1.7.5.3. Results of the 43rd ASEAN Summit on Myanmar's State Problems

The 2023 ASEAN Summit will be held in Jakarta on September 5-7, 2023 and will take place at the Jakarta Convention Center (JCC). One of the results of the agreement from the implementation of the 43rd ASEAN Summit is regarding the problems that occur in Myanmar. As we all know, the Myanmar country is experiencing prolonged problems. The problem is about violence committed by the Myanmar government against its citizens so that the violence causes Myanmar citizens to suffer. Therefore, at the time of this summit, ASEAN strongly condemned the problems that occurred for a long time without any end to the solution.

ASEAN leaders have agreed to use the Five-Point Consensus as the main guide in resolving the crisis of violence in Myanmar. In addition, ASEAN also decided to use the Troika mechanism in resolving problems in Myanmar. The Troika mechanism is a mechanism by the leadership of the triad involving three ASEAN Chairs. The three ASEAN Chairmen include the previous chairman, the current chairman and the chairman after him. With the plan of the mechanism that has been decided by the ASEAN

member countries, it is hoped that the problems that occur in Myanmar can be solved.

1.7.6. Overview of the Rohingya Ethnic Group

The Rohingya are an ethnic Muslim community that occupies the Rakhine (Arakan) region in Western Myanmar which borders the state of Bangladesh. Rohingya comes from the word Roshangee or Rohai which means the Muslim population of Rohang or Roshang, where Rohang or Roshang is an area that is currently called Arakan. The Muslim community in Myanmar is divided into four groups. The first group is an Islamic group of Burmese descent, the second is an Islamic group of Indian descent (Tamil and Bengal), the second is an Islamic group of Rohingya or Arakan descent, and the third is an Islamic group of Chinese descent. The Muslim community in Myanmar is separated from each other based on ethnicity and descent, so that the Muslim community in Myanmar does not occupy a territory in one area.

Since the 14th century, the Muslim community has managed to live in the Arakan region. Where at that time was the period of the Mrauk U Kingdom led by a Buddhist King named Naramaikhla or Min Saw Mun. For 24 years, King Naramaikhla was exiled in the Sultanate of Bengal. But at that time, King Naramaikhla received help from the Sultan of Bengal named Nasirudin, so that King Naramaikhla got the throne in Arakan. The Sultanate of Bengal was

an Islamic kingdom founded in Bengal in 1342. The area controlled by the Bengal Sultanate includes several areas, namely the country of Bangladesh, eastern India, and the western state of Myanmar. After gaining the throne in Arakan, King Naramaikhla then pronounced the creed and changed his name to Suleiman Shah. From then on, Suleiman Shah established the first Muslim community in the Arakan region by bringing Bengalis to help with the administration of his government. Then in 1420, Arakan declared itself an independent Islamic kingdom under the rule of King Suleiman Shah. However, Arakan rule only lasted for 350 years, this is because in 1784 Arakan was re-controlled by the King of Myanmar. Then in 1824, Arakan became a British colony, resulting in a slow decline in the Muslim population in the Arakan region.

The worst situation for the Rohingya ethnic group occurred during World War II, when Myanmar was colonized by the British. Since 1942, the Rohingya have been expelled from the Arakan region. Pro-British forces carried out massacres against the Rohingya. Approximately 100 thousand Rohingya lives were declared dead and thousands of villages were destroyed in the tragedy. From then until now, the Rohingya have lived in fear. But in the same year, Japanese forces invaded Burma and the British withdrew, resulting in a huge vacuum in power and stability. At that time there was communal violence between Rakhine Muslims and

Rohingya. The Rohingya then migrated to Bengal after being massacred on a massive scale.

In 1948, Burma was officially declared independent. So at that time there was a conflict between the government and the Rohingya ethnic group which continued with political and armed movements. Then the Rohingya sought refuge in India and Pakistan. This then causes the Rohingya to have no citizenship because their citizenship rights are denied by Burma. Since then, the Rohingya have had the nickname of a stateless man. In addition, the Burmese government also carried out torture and mass murder of the Rohingya ethnic group so that it caused the Rohingya to flee to Bangladesh. The humanitarian crisis against the Rohingya in the Arakan region continued until the name of Burma was changed to the current Myanmar.

The Rohingya ethnic group has several physical characteristics, including having cheekbones that are not so hard, a nose that is not too thick and has eyes that are not too narrow, having a tall body and having dark skin, but among them there are also those who have reddish skin and yellowish skin.

1.7.7. Overview of Myanmar's State Rules on Citizenship

The state of Myanmar has eight main ethnicities recognized as its citizens, namely Burmas, Kachin, Karen, Karenni, Chin, Mon,

Arakan, Shan, and other ethnic groups. Ethnicities recognized as citizens by the Myanmar state are an ethnic group that has been in Myanmar for a long time before the Myanmar state was officially declared independent. There are eight ethnicities recognized as the indigenous inhabitants of Myanmar. Myanmar's government officially classifies the Bamar ethnic group and 135 other ethnic groups into eight "national major races". The eight ethnicities are the Bamar ethnicity, the Chin ethnicity, the Kachin ethnicity, the Kayin ethnicity, the Kayah ethnicity, the Mon ethnicity, the Rakhine ethnicity and the Shan ethnicity. The state of Myanmar grants individual freedom to eight ethnicities that have been recognized as the indigenous inhabitants of the Myanmar country. Ethnicities that are not included in the eight ethnicities that have been recognized as indigenous people of Myanmar do not receive individual freedom from the Myanmar government.

The citizenship law that applies in Myanmar is the Myanmar Citizenship Act of 1982. In the Law, there are three types that can be categorized as Myanmar citizens. The first is full citizenship, the second is associate citizenship, and the third is naturalized citizenship. The Myanmar Citizenship Law of 1982 also contains rules regarding the criteria for the Myanmar government in granting citizenship status or removing a person's citizenship status if they

have violated the rules stipulated in the Law. Thus, the rules are absolute, legal, and have legal force.

What is meant by full citizenship is the people of Myanmar who have lived in Myanmar for a long time before 1823 or were born to parents who are native citizens of Myanmar and must come from one of the ethnicities in Myanmar. If the community has met these criteria, then the community will obtain full rights as Myanmar citizens so that they can have easy access to public services. Then what is meant by associate citizenship, is the people of Myanmar who obtained their citizenship status through the Union Citizenship Act of 1948, who then had to re-register themselves as Myanmar citizens with a deadline of October 15, 1982 when the Citizenship Law was changed to the Burma Citizenship Law of 1982. People who register beyond the predetermined limit will not be accepted as Myanmar citizens. Then what is meant by naturalized citizenship, is the people of Myanmar who have lived in Myanmar before January 4, 1948, and then a person only applies for citizenship after that date. However, the person must be able to show strong evidence that the person or his or her parents had lived in Myanmar prior to the independence of Myanmar in 1948. According to the Myanmar government, the establishment of the rules regarding citizenship is one of the efforts that can be made by the Myanmar government in order to maintain the stability of its country.

1.7.8. Overview of Religious Policy Rules in Myanmar

The Myanmar state does not have an official state religion, but the Myanmar government has shown an extreme preference that Theravada Buddhism is the majority religion of the nation. Theravada Buddhism is mostly practiced by the Bamar, Rakhine, Shan, Mon and Chinese ethnic groups. In addition to Theravada Buddhism, the people of Myanmar also adhere to Christianity which is embraced by the Chin, Kayin and Karen ethnicities as well as Islam which is embraced by the Rohingya ethnic group. There are also adherents of Hinduism or animism, but the number is very small.

The state of Myanmar has a long history of religious and ethnic conflicts. Myanmar's government is strongly opposed to religious minorities in the country. Myanmar's government cracked down on religious groups that refused to accept military rule. Although there are no specific rules regarding religious policy, the Myanmar government is strongly opposed to religious freedom in the country. Thus, many religious minorities are oppressed.

In fact, there are arrangements that regulate the rights of the population including ethnic minorities based on nationality, ethnicity and religion. However, the Myanmar state did not ratify the arrangement. These arrangements are contained in Article 2 Paragraph (1) and Article 26 of the International Covenant on Civil

and Political Rights as a broad one. Article 2 Paragraph (1) states that all positions or groups are not differentiated before the law, they have the same rights without any discriminatory treatment for the protection of the law that is not differentiated. Meanwhile, Article 26 states that Article 2 Paragraph (1) applies to anyone regardless of the individual's background. This covenant explains that regarding the guarantee of freedom of religion for all people, this guarantee of religious rights does not only apply to the majority group, but also to certain ethnic minorities without applying different treatments.