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## Legal Protection of Rohingya Citizens Related to The Conflict in Myanmar

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### Article Info

#### Keywords:

Legal Protection;  
Conflict; Rohingya

#### How to cite [Chicago Manual of Style 17th edition (full note)]:

Elfirda Ade Putri et al.,  
“Legal Protection of  
Rohingya Citizens  
Related to The Conflict  
in Myanmar,” *Jambura  
Law Review* 5, no. 1  
(2023): 60-75.

### Abstract

*There are many crimes against humanity cases that occurred in the world. One of them is happened in Myanmar, which is Rohingya ethnic conflict. Rohingya ethnic conflict is an issue based on discrimination to Rohingya ethnic because there are some differences at ethnic and religion. Ethnic Rohingya is not recognized by Myanmar and not granted a status of citizenship Based on Myanmar Citizenship Law (Burma Citizenship Law 1982). This research was conducted to find out how the legal forms to Rohingya citizens based on international law. This methodology is normative legal research that uses statutes, case, fact approaches. The research found that the role of UNHCR in handling Rohingya cases has been mandated by the United Nations and in accordance with UNHCR Statute. UNHCR plays an important role in addressing the issue of Rohingya case, at least as initiator, facilitator, conciliator, and determination. Such roles were taken to resolve the conflict that face by Rohingya ethnic, like provide protection, safety, and facilitate every Rohingyas refugees needs. In addition to the role of UNHCR, some countries such as Indonesia, Thailand and Canada also provided some arrangement in addressing the issue of Rohingya.*

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## 1. Introduction

God created humans with different physical forms, languages, cultures, ethnicities, races and so on so that humans themselves can easily recognize one human from another. The physical form, language, culture, ethnicity, race can be recognized easily in ethnic groupings. Ethnicity itself is defined as a population that has a group identity based on a particular culture and usually has a definite ancestor or is considered the same.<sup>1</sup> In this world there are two types of ethnic groups, namely ethnic majority and ethnic minorities.<sup>2</sup> This is where we can see that the fate of this ethnic minority does not always get good treatment in the territory of the country it occupies, human rights violations are often experienced by this ethnic minority.

## 2. Problem Statement

Regarding human rights violations, according to C. de Rover, human rights violations are any internationally wrong actions committed by a country, and can lead to international accountability to that country. International wrongdoing is deemed to exist if:

- 1) An act consisting of an act or omission of an act attributable (to blame) to the state under international law.
- 2) The act is an act that violates the international obligations of the country.<sup>3</sup>

In the Rome Statute of 1998 (Rome Statute of The International Criminal Court 1998 Art 5), it is explained about the definition of human rights violations which reads:<sup>4</sup>

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.

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<sup>1</sup> Janu Murdiyatmoko, *Sosiologi: Memahami Dan Mengkaji Masyarakat* (PT Grafindo Media Pratama, 2007), 8.

<sup>2</sup> Ipung Pramudya Setiawan and Made Selly Dwi Suryanti, "Keterlibatan Asean dalam Menangani Konflik Myanmar (Studi Kasus: Konflik Etnis Rohingya 2017 – 2019)," *POLITICOS: Jurnal Politik dan Pemerintahan* 1, no. 2 (September 16, 2021): 83–97, <https://doi.org/10.22225/politicos.1.2.2021.83-97>.

<sup>3</sup> C. de Rover, *To Serve & To Protect: Acuan Universal Penegakan HAM* (Jakarta: Raja Grafindo Persada, 2000), 22.

<sup>4</sup> Article 5, Rome Statute of The International Criminal Court 1998.

Which, in short, means that gross human rights violations include the crime of genocide, crimes against humanity, war crimes and crimes of aggression. Along with the passage of time a lot of cases of crimes against humanity that occurred in this world. One of them is in Myanmar. Let's just say the conflict against the Rohingya ethnic. The Rohingya ethnic conflict is a conflict based on discriminatory treatment only because of ethnic and religious differences. The Rohingya ethnicity is not recognized by the State of Myanmar and does not acquire citizenship. This is evidenced by the issuance of the Myanmar Citizenship Law (Burma Citizenship Law 1982).

The problem of gross human rights violations in Myanmar is one of the most serious problems in the world. Because it will not only have a negative impact on the people of Myanmar but will also have an impact on other countries.

### 3. Methods

The research used in writing this research is a type of normative research. Normative legal research is also known as doctrinal legal research.<sup>5</sup> In this type of research, it is often conceptualized as what is said in laws and regulations, or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.<sup>6</sup>

This research carried out to find out and study legal protection for ethnic groups Rohingya in Myanmar in the perspective of international human rights, in addition to know and study solutions cases of gross human rights violations against Rohingya ethnic groups in Myanmar.

Source legal materials obtained and processed in normative legal research is secondary data obtained from literature. Secondary data consists of primary legal material, namely legal material which is authorities means to have authority or binding.<sup>7</sup> In this case the laws and regulations, declarations and conventions international. Next legal material secondary, namely legal materials that provide an

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<sup>5</sup> Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1-20, <https://doi.org/10.51749/jphi.v2i1.14>.

<sup>6</sup> Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2010), 118.

<sup>7</sup> Bambang Sunggono, "Metode Penelitian Hukum," *Jakarta: Raja Grafindo Persada*, 2003, 13.

explanation of the material primary law includes books, results related research, expert opinion, writing from experts related to writing writer. In addition, tertiary legal materials are: legal materials that provide guidance or additional explanation of the material the primary and secondary laws that exist in research. Collection technique legal material that is carried out is by how to explore the normative framework using legal materials discuss legal theories, protection of human rights against the Rohingya ethnic group. Good legal material primary and secondary legal materials collected by topic problem that has been formulated based on card system and classified according to the source hierarchy to be studied comprehensively.

Legal materials obtained in the study bibliography on legal materials will described and connected in such a way so that it can be presented in writing more systematic in order to achieve the target what you want is an answer to the problem of violations against people Rohingya ethnicity. Furthermore, existing legal materials analyzed to see how the provisions of international law overcome the problem of oppression faced by the people Rohingya ethnicity so that it can help to become a reference and legal considerations for use provide a solution how it should be legal protection for ethnic groups Rohingya in Myanmar.

## **4. Discussion**

### **4.1. Role of UNHCR in Addressing Rohingya Ethnic Issues**

The UN-mandated United Nations High Commissioner for Refugees (UNHCR) humanitarian organization plays a role in protecting refugees and helping find solutions to their suffering, as the refugee problem has grown in complexity over the past half century.<sup>8</sup> At the international level, UNHCR promotes international refugee treaties and monitors government compliance with international refugee law. UNHCR staff also promote refugee law among all parties involved in refugee protection.<sup>9</sup> On December 14, 1950, the UNHCR Statute established the function of UNHCR, namely to provide international protection, under the auspices of the United Nations, to

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<sup>8</sup> Taufiq-E.- Faruque, "Rohingya Refugee Crisis in Bangladesh: The Case of UNHCR's Response," *Jurnal Hubungan Internasional* 9, no. 1 (September 8, 2020): 28–40, <https://doi.org/10.18196/hi.91160>.

<sup>9</sup> Aris Pramono, "Peran UNHCR Dalam Menangani Pengungsi Myanmar Etnis Rohingya Di Bangladesh (Periode 1978-2002)," *Jakarta: Universitas Indonesia*, 2010, 76.

refugees who are within the scope of this statute. In addition, it also seeks solutions to the refugee problem as regulated above.

It is also important that UNHCR also assists and encourages the government of a country to immediately become a party to the 1951 convention and its protocol. UNHCR has four roles, namely as initiator, facilitator, mediator and conciliator, and as determination. In its role as the initiator, UNHCR is responsible for resolving the refugee problem, so it must intervene so that the refugee problem does not become a disturbance to regional security. Ensure that everyone has the right to seek asylum and a safe place in another country, with the option of voluntary return to his country, local integration or resettlement to a third country. In handling Rohingya refugees, UNHCR acted as an initiator after the Bangladesh government requested UNHCR assistance to deal with Rohingya refugees who entered their country. Since 1992 UNHCR has carried out its role as advisor, coordinator, and supervisor of the protection of humanitarian aid for refugees.<sup>10</sup> In its role as a facilitator, UNHCR continues to try to develop the quality of refugees as human beings in various aspects. The Rohingya refugees are accommodated in camps under UNHCR supervision, namely in Nayapara and Kutapalong.

In its role as mediator and conciliator, UNHCR continues to encourage cooperation between the Myanmar government to find joint solutions in dealing with Rohingya refugees. One of the best solutions is repatriation or return of Rohingya refugees to their country of origin (Myanmar).<sup>11</sup> However, this solution is still difficult for UNHCR to implement, because until now the Myanmar government has not recognized the status of Rohingya refugees as one of the ethnic groups in Myanmar, and there are still discriminatory practices against the Rohingya in Myanmar by the Myanmar military junta government.

Human rights are believed to be has universal value. Universal value means knows no boundaries of space and time. Score this universal which is then translated in various products of national law in various countries to protect and uphold human values.

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<sup>10</sup> *Ibid.*, p. 78.

<sup>11</sup> Sanem Ozen and Davide Ziveri, "Making Psychosocial Support Programmes in Emergencies Inclusive: Lessons Learned from Interventions in Rohingya Camps," *Intervention* 17, no. 2 (May 1, 2019): 5, [https://doi.org/10.4103/INTV.INTV\\_29\\_19](https://doi.org/10.4103/INTV.INTV_29_19).

Even this universal value is confirmed in international instruments, including international treaties in the field of human rights, such as the International Covenant on Civil and Political Rights, International Convention on Economic, Social and Cultural Rights, and many more. But reality shows that human rights values that universal turns out in its application have no similarity and uniformity. These human rights including the following, Magna Charta (Supreme Charter 1215), Bill of Rights (UU Hak 1689), Declaration Des Droits de L “home et de Citoyen” (Declaration of Human Rights and French Citizen in 1789), Bill of Rights (Virginia Rights Act 1789), United Nations Declarations of Human Rights and Atlantic Charters. Conflicts that occur against which Rohingya ethnic?

Myanmar government is considered violate human rights in dealing with conflicts, such as the omission of acts of violence, murder, attempted deportation, and forcible transfer which until now This has not been completed.<sup>12</sup> According to the Declaration Universal Human Rights (UDHR) Article 2 states that every person entitled to all the rights and freedoms contained in this Declaration without distinction of any kind, such as race, color, gender, religion, language, political beliefs or beliefs others, national and social origins, property, birth and other status.

Furthermore, the distinction cannot be carried out on the basis of political status, law or the international status of the country or the region one is from, fine of an independent country, a trust territory, territory without self-government, or the area under the boundary other sovereignty. It is clear from what stated in the UDHR, how? Myanmar government has violated human rights by doing a lot violations such as the right to be free move and change places, the right to free from torture and violence, education, the right to do business and trade, and the right to be free believe and worship In the United Nations Charter, the commitment to fulfill, protect human rights and respecting basic human freedom universally affirmed repeatedly including in Article 1 (3) which states to advance international cooperation in solve problems international economic, social, culture and humanity, and promote and improve respect for human rights and fundamental freedom for everyone without distinction of race, sex, language or religion. This commitment then followed up by the United

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<sup>12</sup> *Ibid.*

Nations through establishment of legal instruments which regulates human rights as following: Universal Declaration of Human Rights Human or abbreviated UDHR is a big step taken by international community in 1948. The norms contained in the UDHR is an international norm agreed and accepted by the countries in the world through the United Nations.<sup>13</sup>

The Universal Declaration of Human Rights is a framework human rights goals that are designed in the form of common and is the main source establishment of two human rights instruments, namely: International Covenant on Civil Rights and Politics and the International Covenant on Economic, Social and Cultural Rights. Rights contained in the UDHR are: realization of existing basic rights within the United Nations, for example related to law enforcement in Articles 3, 5, 9, 10 and 11. These articles are successively establish the right to life, right to freedom and personal security, prohibition of torture and other cruel punishments, no humane and degrading human, arrest ban arbitrary, right to justice, right on the presumption of innocence until proven guilty, as well as legal prohibitions apply recede. Overall UDHR is a guide for law enforcement in running or doing her job. The rights in the UDHR are regulated more clearly and in detail in the Covenant International on Civil and Political Rights, which comes into force internationally since March 1976. This Convention regulates regarding the right to life; the right not to be tortured, cruelly treated or punished, inhuman or demeaning his dignity; right to independence and personal security; the right not to be imprisoned simply because inability to fulfill obligations contractual; the right not to be punished with retroactive punishment in application of criminal law.

The Covenant enters into force on January 1976. Indonesia through Law no. 11 2005 approved it. Reason the need to consider rights in this Covenant are: The law applies not in a vacuum. Enforcement officers the law in carrying out its duties does not free from economic, social and economic problems community culture; The assumption that rights economic and social rights are not important applied in daily work is not true, because in the right in the economy there is the principle of non-discrimination

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<sup>13</sup> Josina Augustina Yvonne Wattimena and Mariah Agnes Matakana, "Pre-Purchase Agreement on the Covid-19 Vaccine and Its Impact on the Right to Health," *SASI* 27, no. 4 (November 27, 2021): 414–22, <https://doi.org/10.47268/sasi.v27i4.681>.

and protection against disappearance forced; Rights protected by two The Covenant is universally recognized as something related to each other. As is the case with the Covenant on Civil Rights and Politics, the Covenant is in implementation is also supervised by a Committee (Committee on Economic Rights, Social and Cultural). This Convention enters into force in January 1951. Indonesia through Law no. 26 years 2000 concerning the Human Rights Court stipulates genocide as violation Human rights are heavy. This convention stipulates Genocide as an international crime and determine the need for cooperation internationally to prevent and eliminate the crime of genocide.

Convention Against Torture and Other Treatment or Punishment that Cruel, Inhuman and Degrading Human Dignity (Convention Against torture) came into effect from January 1987. Indonesia ratified this Convention through Law no. 5 of 1998. This Convention regulate more about what contained in the Covenant on Civil Rights and Politics.<sup>14</sup> This convention obliges states to take legislative steps, administrative, legal, or other measures other effective means to:

- 1) Prevent crime torture, expulsion, return (refueler), or the extradition of a person to another country if there is a reason that strong enough to suspect that people it will be in a state danger (because of being targeted torture),
- 2) Ensure that everyone who stated that he had tortured in an area of authority the law has the right to complain make sure the case is checked immediately by the parties who impartially authorized,
- 3) Ensure that the person who complains and the witnesses are protected from all ill-treatment or intimidation as a result of complaints or testimonies that they give,
- 4) Guarantee the victim obtain compensation as well as (the right to get) fair compensation and worthy. This Convention in its implementation supervised by the Committee Against Torture (CAT), which is formed based on the rules contained in it.

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<sup>14</sup> Jeroen Temperman, "The International Covenant on Civil and Political Rights and the 'Right to Be Protected against Incitement,'" *Journal of Law, Religion and State* 7, no. 1 (2019): 89–103.



This Convention comes into force from January 1969 and legalized by Indonesia through Law no. 29 of 1999. There is prohibition of all form's racial discrimination in politics, economic, social and cultural. Besides that, This Convention also guarantees the right of every people to be treated equally in front law without distinction of race, color, origin and ethnicity. This convention too formed the Elimination Committee Racial Discrimination, who watches implementation. This Convention comes into force from September 1981 and ratified by Indonesia through Law no. 7 of 1984. Since its entry into force, this convention has been become an international instrument that eliminate discrimination against women in politics, economics, socio-cultural, and civil. this convention requires the state to all appropriate means and without delay to implement a policy which eliminates discrimination against women and provide opportunities to them to get human rights and basic freedoms based on equality between men and women. In practice, this Convention also regulates the formation of the Committee Elimination of Discrimination against Women (CEDAW).

The Convention on the Rights of the Child comes into force since September 1990 and authorized by Indonesia through Presidential Decree No. 36 years old 1990.<sup>15</sup> Under this Convention States must respect and guarantee the rights of every child without discrimination of race, color, gender, language, religion, opinion political or other opinion, nationality, national origin or social, wealth, disability, birth or other states. The state must also take appropriate steps to ensure that children are protected from any form of discrimination or punishment based on status, activities, opinions expressed, or the trust of the child's parents, the guardian who law, or a member of his family. this convention also formed the Committee on the Rights of the Child (CRC) to oversee the implementation of the contents of the Convention. Lately in various media is good printed and electronically published news about Rohingya refugees in Indonesia Myanmar. Notice about the problem of Rohingya refugees is not as wide as reporting on problems that the same is experienced by ethnic groups other minorities, such as the Karen ethnic also receive the same treatment the worst of the Myanmar Military Junta. Rohingya people are the name for the people of Muslim minority originating from the region Arakhan in western Myanmar. Characteristic

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<sup>15</sup> Cynthia Price Cohen, "The United Nations Convention on the Rights of the Child: A Feminist Landmark," *William & Mary Journal of Women and the Law* 3 (1997): 29.

features Rohingya people can be seen from the physical appearance, language, and culture that shows the proximity of the Rohingya people to South Asian society. Government Myanmar should be responsible against the Rohingya people even take a reverse stance and let the plight of the Rohingya people in heartbreaking.<sup>16</sup> Many of them are forced to work for building roads and military camps, persecuted and women are victim's rape. As a result, until now still there was a wave of escapes and refugees of the Rohingya who spread to various countries, including Indonesia. Serious human rights violations that carried out by the Government of Myanmar to Rohingya ethnicity is a crime against expulsion of humanity force. Forced eviction here by taking actions systematic. Rohingya are being targeted by ethnic cleansing properly structural, through legal products, to escalates into violence which explicitly addressed to the Rohingya ethnicity.

The statelessness of Rohingya children has implications administrative where it does not have document indicating their identity. Rohingya children who do not documentation becomes even more vulnerable when forced to leave Myanmar to seek protection. As an undocumented migrant, children Rohingya don't have many options for can cross international borders. People smuggling by sea is one of the methods used by refugee children to get out of Myanmar.<sup>17</sup> Declaration of rights population belonging to the Group Minorities by Nationality, Religion, Ethnicity and Language 1992, in This declaration describes the state protection against existence and national identity, ethnicity, culture, religion and minorities as well as rights for minorities. Rights it is the right to hug and practice religion freely to participate in life their religion, the right to establish and maintain relationships that cross boundaries country freely and peacefully with other members from the group them and the people who belong in other minority groups who have religious ties with them, people belonging to the minority can exercise their rights without discrimination. But in this case ethnic Rohingya are not given freedom in carry out their worship, it can be seen that what happened in early June 2012 almost all mosques in the capital

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<sup>16</sup> Malcolm N. Shaw, *International Law* (Cambridge university press, 2017), 540.

<sup>17</sup> Shaila Tieken, "Ketiadaan Kewarganegaraan Pada Anak-Anak Rohingya Sebagai Bentuk Kekerasan Struktural Berbasis Etnis (Studi Kasus Anak-Anak Pengungsi Rohingya Di Community Housing Wisma YPAP Medan)," *Jurnal Kriminologi Indonesia* 9, no. 1 (2013): 51–65.

Arakan have been destroyed or burned, many mosques and madrasas in Muangdaw and Akyab were closed and Muslims cannot worship in it. If anyone violates or tries for prayer will be arrested and punished. In addition, there is a prohibition on renovating any mosque and prohibition to build a new mosque. In this case, the government Myanmar issues policy Burmanization and Buddhism. Although In Myanmar, there are various ethnic minorities who have religions other than Buddhist, but the ethnicity is still recognized as a citizen of Myanmar. Thing This is due to the reason that Rohingyas are Muslims and their identity such as physical characteristics and language considered different from the majority population in Myanmar. Apart from that there are restrictions on marriage where the Rohingya need time years to get permission married, there are restrictions in terms of get a job, have restrictions in terms of getting education which in this case has causes 80% of the ethnic Rohingya blind letter.

Based on this case, The Myanmar government has disobeyed the principle of the prohibition of discrimination wherein the principle of this is a ban to provide different treatment based on religious differences, skin color, language and so on. Several international instruments which regulate legal protection for Rohingya ethnic groups who have experienced discrimination from the Myanmar government is: Convention Concerning Prevention and Punishment of Crime Genocide Defined by Resolution UN General Assembly 260 A(III) at 9 December 1948. This Convention enters into force on January 12, 1951. Convention on the Prevention and Punishment of the Crime of Genocide is the first human rights treaty approved by the United Nations General Assembly. This Convention focuses attention on protection of national, racial, ethnic, and religion from threats regarding their existence.<sup>18</sup>

#### **4.2. Protection Against Nationality Without Nationality in International Law Citizenship is a legal bond between a person and a country**

Citizenship gives people an identity, but more importantly, citizenship allows them to have and exercise the various rights inherent in it. In article 1 of the 1954 convention on the status of stateless persons stipulates "For the purpose of this Convention, the

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<sup>18</sup> Beth Van Schaack, "The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot," in *Genocide and Human Rights* (Routledge, 2017), 145-77.

term "stateless person" means a person who is not considered as a national by any State under the operation of its law" in the article 1 defines the term "stateless persons as persons who are not considered citizens of a country according to the laws in force in that territory." Furthermore, it sets the standards for the treatment to be accorded to stateless persons.<sup>19</sup> If we look at Article 15 of the Universal Declaration of Human Rights 1948 which states that:

- 1) Everyone has the right to a nationality.
- 2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality

Through the formulation of this article, the international community recognizes that every individual, anywhere in the world, should have a legal bond of citizenship with a country. In other words, international law says clearly that statelessness should be avoided.<sup>20</sup> The demand for punishment of perpetrators of gross human rights violations is a state obligation that has been imposed by international law. The state's obligation to punish or extradite persons accused of gross human rights violations can be found in various international treaties, including the Genocide Convention. The obligation to punish perpetrators of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide 1948 is stated in Articles IV and VI, which are as follows:

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals; Persons charged with genocide or any of the other acts enumerated in article II shall be tried by a competent tribunal of the State in the territory of which that act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted it jurisdiction.

Based on these provisions, the state's obligation to prosecute perpetrators of the crime of genocide is carried out through:

- 1) To enact legislation based on the constitution which contains the imposition of

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<sup>19</sup> Masyhur Effendi and Taufani S. Evandri, "HAM Dalam Dinamika/Dimensi Hukum, Politik, Ekonomi, Dan Sosial," *Bogor: Penerbit Ghalia Indonesia*, 2014, 135.

<sup>20</sup> UNHCR, *Melindungi Hak-Hak Orang-Orang Tanpa Kewarganegaraan: Konvensi 1954 Tentang Status Orang-Orang Tanpa Kewarganegaraan* (Switzerland: UNHCR, 2010).

- punishments for persons guilty of the crime of genocide or other acts;
- 2) Carry out national courts in the country in the area where the crime was committed;
  - 3) Extradite the perpetrators of the crime of genocide, by excluding the crime as a political crime.<sup>21</sup>

The state's obligation to cooperate in law enforcement efforts against perpetrators of crimes against humanity is also regulated in the Rome Statute. Article 86 of the Rome Statute states that states will cooperate fully with the Court to conduct investigations and prosecutions of crimes within the Court's jurisdiction. One of the reasons why there are still Rohingyas who do not have citizenship can be seen from the effectiveness of the rule of law that provides legal protection or grants citizenship to a person. To be able to determine whether a rule of law can be effective or not, Lawrence M Friedman suggests three components that affect the effectiveness of a rule of law, namely: substance, structure and legal culture.<sup>22</sup> The substance component relates to the rules and norms that govern the problem. Another component that affects the effective enforcement of the law is the structural component. The structure in this case is the state and its law enforcement officers. In connection with the problem of Stateless Persons from the Rohingya Ethnicity, the Government of Myanmar as a structural component since 1948 has carried out various kinds of military operations aimed at discrediting the Rohingya Ethnic and removing them from Myanmar land. The third component that influences a law to run effectively is the component of cultures (legal culture). This component of cultures is defined as the attitude and behavior of the Stateless Person, in this case the Rohingya Ethnicity towards the implementation of the rule of law that provides protection for the Stateless Person and also the policies of the Government of Myanmar.<sup>23</sup> To resolve this problem, one of the things that can be done is to put pressure on Myanmar by the international community, either in the form of negotiations in

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<sup>21</sup> Nalom Kurniawan, "Kasus Rohingya dan Tanggung Jawab Negara dalam Penegakan Hak Asasi Manusia," *Jurnal Konstitusi* 14, no. 4 (February 9, 2018): 880–905, <https://doi.org/10.31078/jk1449>.

<sup>22</sup> Nadia Putri Pasca, "Teori Sistem Hukum Lawrence M. Friedman," accessed January 14, 2022, [https://www.academia.edu/34996829/TEORI\\_SISTEM\\_HUKUM\\_LAWRENCE\\_M\\_FRIEDMAN](https://www.academia.edu/34996829/TEORI_SISTEM_HUKUM_LAWRENCE_M_FRIEDMAN).

<sup>23</sup> Chris Lewa, "North Arakan: An Open Prison for the Rohingya in Burma," *Forced Migration Review*, no. 32 (2009): 11.

international forums (diplomatic method), resolutions from the United Nations, or by using violent means without weapons such as an economic embargo. that Myanmar carry out its international obligations to provide protection to the Rohingya Ethnic and stop carrying out its military operations, and recognize them as civilized human beings who have the right to the right to a decent life free from torture and ill-treatment.<sup>24</sup>

## 5. Conclusion

The role of UNHCR in dealing with Rohingya cases is carried out based on the mandate of the United Nations and in accordance with Article 8 of the UNHCR Statute, namely providing international protection to refugees. UNHCR played 4 (four) important roles in this case, namely as initiator, facilitator, conciliator, and determination. In addition to UNHCR, a number of countries such as Indonesia, Thailand and Canada also play a role in resolving the Rohingya conflict. Permanent solutions and bilateral assistance such as voluntary repatriation for example cannot be carried out if UNHCR is not successful in convincing refugees that repatriation is the safest option for them to choose. In addition, repatriation cannot be carried out if the country of origin left by the refugees still threatens their security. UNHCR should also continue to provide the necessary assistance when the refugees arrive in their countries of origin, and it is also necessary to monitor the conditions of refugees who have settled in their countries of origin. In the end, the best solution for the Rohingya refugees is the elimination of all forms of discrimination by the Myanmar government.

The protection that can be given to the stateless Rohingya is based on Article 15 of the Universal Declaration of Human Rights 1948 which recognizes that every individual, anywhere in the world, should have a legal bond of citizenship with a country. The Myanmar government must immediately amend or amend the 1982 Citizenship Law by giving recognition to the Rohingya ethnicity as part of Myanmar

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<sup>24</sup> Nining Nur Diana, "Peran Negara Dalam Memberikan Perlindungan Hukum Terhadap Orang-Orang Yang Tidak Memiliki Kewarganegaraan (Stateless Person) Berdasarkan Konvensi Tentang the Status of Stateless Person 1954 (Studi Kasus Orang-Orang Etnis Rohingya Myanmar)" (Brawijaya University, 2014), 15-16.

and promoting respect for human rights without discrimination in any form and creating a harmonious condition among religious communities.

## References

- Amiruddin, and Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: Rajawali Pers, 2010.
- Cohen, Cynthia Price. "The United Nations Convention on the Rights of the Child: A Feminist Landmark." *William & Mary Journal of Women and the Law* 3 (1997): 29.
- Diana, Nining Nur. "Peran Negara Dalam Memberikan Perlindungan Hukum Terhadap Orang-Orang Yang Tidak Memiliki Kewarganegaraan (Stateless Person) Berdasarkan Konvensi Tentang the Status of Stateless Person 1954 (Studi Kasus Orang-Orang Etnis Rohingya Myanmar)." Brawijaya University, 2014.
- Effendi, Masyhur, and Taufani S. Evandri. "HAM Dalam Dinamika/Dimensi Hukum, Politik, Ekonomi, Dan Sosial." *Bogor: Penerbit Ghalia Indonesia*, 2014.
- Faruque, Taufiq-E.-. "Rohingya Refugee Crisis in Bangladesh: The Case of UNHCR's Response." *Jurnal Hubungan Internasional* 9, no. 1 (September 8, 2020): 28–40. <https://doi.org/10.18196/hi.91160>.
- Kurniawan, Nalom. "Kasus Rohingya dan Tanggung Jawab Negara dalam Penegakan Hak Asasi Manusia." *Jurnal Konstitusi* 14, no. 4 (February 9, 2018): 880–905. <https://doi.org/10.31078/jk1449>.
- Lewa, Chris. "North Arakan: An Open Prison for the Rohingya in Burma." *Forced Migration Review*, no. 32 (2009): 11.
- Murdiyatomoko, Janu. *Sosiologi: Memahami Dan Mengkaji Masyarakat*. PT Grafindo Media Pratama, 2007.
- Nurhayati, Yati, Ifrani Ifrani, and M. Yasir Said. "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum." *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1–20. <https://doi.org/10.51749/jphi.v2i1.14>.
- Ozen, Sanem, and Davide Ziveri. "Making Psychosocial Support Programmes in Emergencies Inclusive: Lessons Learned from Interventions in Rohingya Camps." *Intervention* 17, no. 2 (May 1, 2019): 290. [https://doi.org/10.4103/INTV.INTV\\_29\\_19](https://doi.org/10.4103/INTV.INTV_29_19).
- Pasca, Nadia Putri. "Teori Sistem Hukum Lawrence M. Friedman." Accessed January 14, 2022. [https://www.academia.edu/34996829/TEORI\\_SISTEM\\_HUKUM\\_LAWRENCE\\_M\\_FRIEDMAN](https://www.academia.edu/34996829/TEORI_SISTEM_HUKUM_LAWRENCE_M_FRIEDMAN).
- Pramono, Aris. "Peran UNHCR Dalam Menangani Pengungsi Myanmar Etnis Rohingya Di Bangladesh (Periode 1978-2002)." *Jakarta: Universitas Indonesia*, 2010.

- Rover, C. de. *To Serve & To Protect: Acuan Universal Penegakan HAM*. Jakarta: Raja Grafindo Persada, 2000.
- Setiawan, Ipung Pramudya, and Made Selly Dwi Suryanti. "Keterlibatan Asean dalam Menangani Konflik Myanmar (Studi Kasus: Konflik Etnis Rohingya 2017 – 2019)." *POLITICOS: Jurnal Politik dan Pemerintahan* 1, no. 2 (September 16, 2021): 83–97. <https://doi.org/10.22225/politicos.1.2.2021.83-97>.
- Shaw, Malcolm N. *International Law*. Cambridge university press, 2017.
- Sunggono, Bambang. "Metode Penelitian Hukum." *Jakarta: Raja Grafindo Persada*, 2003.
- Temperman, Jeroen. "The International Covenant on Civil and Political Rights and the 'Right to Be Protected against Incitement.'" *Journal of Law, Religion and State* 7, no. 1 (2019): 89–103.
- Tieken, Shaila. "Ketiadaan Kewarganegaraan Pada Anak-Anak Rohingya Sebagai Bentuk Kekerasan Struktural Berbasis Etnis (Studi Kasus Anak-Anak Pengungsi Rohingya Di Community Housing Wisma YPAP Medan)." *Jurnal Kriminologi Indonesia* 9, no. 1 (2013): 51–65.
- UNHCR. *Melindungi Hak-Hak Orang-Orang Tanpa Kewarganegaraan: Konvensi 1954 Tentang Status Orang-Orang Tanpa Kewarganegaraan*. Switzerland: UNHCR, 2010.
- Van Schaack, Beth. "The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot." In *Genocide and Human Rights*, 145–77. Routledge, 2017.
- Wattimena, Josina Augustina Yvonne, and Mariah Agnes Matakena. "Pre-Purchase Agreement on the Covid-19 Vaccine and Its Impact on the Right to Health." *SASI* 27, no. 4 (November 27, 2021): 414–22. <https://doi.org/10.47268/sasi.v27i4.681>.