



Article

Humanitarian Conflict in Myanmar from the Perspective of International Law and Human Rights

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Abstract

This article presents an analysis of the humanitarian conflict in Myanmar from the perspective of international law and human rights. The study employs a normative legal approach, focusing on legislation, case studies, and analytical methods. Through this research, we gain an understanding of the relevant international legal framework and norms pertaining to the protection of human rights in the context of the conflict in Myanmar. Case studies on human rights violations are utilized to examine international legal responses and efforts to ensure accountability. The article emphasizes the importance of protecting and upholding human rights in addressing the humanitarian conflict in Myanmar. It is hoped that this contribution will expand understanding of the significance of international law and human rights in achieving sustainable justice and peace in Myanmar and globally.

Keyword

Conflict in Myanmar , humanity, international law, human right.

INTRODUCTION

The humanitarian conflict occurring in Myanmar has sparked global concerns regarding systematic and widespread violations of human rights. This conflict involves violence between the Myanmar government, ethnic minority groups, and different religious groups. As a result, there have been mass displacements, massacres, mass rapes, and other human rights violations (Salsabila & Ridwan, 2023a). In addressing this conflict, it is important to analyze its handling from the perspective of international law and human rights.

The deep-rooted background of the conflict in Myanmar is based on ethnic diversity and political turmoil in the region. The ethnic diversity in Myanmar has historical roots connected to the British occupation in 1824. For over a century, Myanmar was a British colony that exploited its agricultural resources, particularly rice. The British government recruited a significant number of migrant workers to maximize their profits from the land they controlled. The impact of these policies can be observed in the 17th century, when many Rohingya ethnic groups migrated to Myanmar. Census data between 1871 and 1911 indicate a rapid increase in the Muslim population in Myanmar, tripling compared to previous figures (Setiawan & Suryanti, 2021, p. 85).

The British also promised to recognize the land inhabited by the Rohingya as a "Muslim State" in exchange for their support (Matthew, 2020). The loyalty of the Rohingya, who are Muslims, towards the British was evident during the outbreak of World War II when they supported the British while the majority of Myanmar nationalists supported Japan. After World War II, the British granted the Rohingya a strategic position within the governmental structure, promising them an autonomous region. However, this promise was not immediately fulfilled. Following Myanmar's independence, the Rohingya demanded the formation of an autonomous region in accordance with the promise made by the British government. However, the government of Myanmar rejected these demands.

The Rohingya's support for the British during the colonial era became a negative focus in Myanmar's struggle for independence, leading the Myanmar government and nationalists to label the Rohingya as foreigners. The government also refused to grant citizenship to the Rohingya. Many people in Myanmar believed that the Rohingya received excessive benefits from the British administration, and this perception further strengthened the alliance between the nationalist movement and the Buddhist community, fueling hatred towards the Rohingya. In 1950, some individuals filed claims to recognize the Rohingya as part of Myanmar and demanded the promised territories. However, their movement did not achieve the expected outcomes as the Myanmar military swiftly suppressed the movement (Abdelkader, 2017).

The transition to a one-party democracy clearly did not bring any benefits to the Rohingya; in fact, it marked them as a dangerous group threatening national stability. Since then, the Myanmar military has engaged in heinous acts such as rape, torture, and even murder. In 1977, the government implemented a national registration process, categorizing Rohingya as illegal residents. Then, in 1982, through the Citizenship Law of Myanmar, the recognition of the Rohingya ethnic group as citizens of Myanmar was officially denied. The violence against the Rohingya ethnic group has persisted to this day. Currently, the Rohingya remain stateless, lacking legal protection. Their rights, particularly their freedom of worship, are severely restricted by the state-imposed limitations on their identity (Putu, Yulianti, Gede, & Mangku, 2019).

In this research, a normative legal approach is utilized to examine cases that violate existing legislation. The legal sources employed encompass primary legal materials, secondary legal materials, and tertiary legal materials obtained from literary sources. Primary legal materials encompass legislation, conventions, and declarations related to international law. On the other hand, secondary legal materials comprise journals, books, and expert opinions discussing legal aspects related to the cases of Rohingya ethnic conflict resolution. Tertiary legal materials serve as sources that elucidate primary and secondary legal materials, such as dictionaries and encyclopedias. The aim of this study is to identify and analyze the legal protections for the Rohingya community in Myanmar based on the perspectives of international law and international human rights.

This journal article aims to analyze the handling of the humanitarian conflict in Myanmar from the perspective of international law and human rights. By analyzing relevant international legal norms and human rights principles, this study will explore the challenges and opportunities in implementing law enforcement, victim protection, and conflict resolution.

METHODS

This article employs a normative research method that relies on a legislative approach, conflict approach, and analytical approach (Jonaedi Efendi, 2018). Based on the legislative approach, the author will examine human rights and international law instruments. In the conflict approach, the author will analyze violations of humanitarian conflict occurring in Myanmar. In this research, various types of legal materials are utilized, including secondary data encompassing primary legal materials, secondary legal materials, and non-legal materials. The data is then processed and analyzed using descriptive methods.

INTERNATIONAL LAW AND HUMAN RIGHTS PROTECTION

Human rights are rights inherent to every individual by virtue of being human (Mujaid Kumkelo, Moh Anas Kholish, 2015). These rights are not granted by society or determined by positive law but are based on the dignity of human beings themselves. Every person born in this world possesses their own rights as living beings, regardless of their race, skin color, gender, culture, or nationality. These rights are inalienable and cannot be revoked, as they are inherently attached to human beings. No matter how bad the treatment or how cruel the actions inflicted upon an individual, they will not lose their humanity and will continue to possess their inherent rights. In other words, these rights are inherent to them as human beings (Donnelly, 2003, p. 7). Human rights are highly valued by any nation, making them one of the subjects of International Law as time goes by.

In its early development, international law solely encompassed regulations governing the relations between states. The subjects were highly exclusive, limited only to states. Other entities, including individuals, were merely objects of the system or beneficiaries of it. Individuals, as citizens, were entirely subject to the authority of their respective states. In this sense, states could indeed establish provisions in the interest of their citizens (individuals), but such provisions did not confer substantive rights upon individuals that they could enforce through judicial procedures. It is the state that defends the rights or interests of its citizens when they face treatment contrary to the rules or arbitrary actions from other states (K.M. Smith et al., 2008, p. 35).

According to Hugo Grotius, the protection of human rights refers to the responsibility of the state for the well-being of foreigners or state responsibility for injury to aliens (Rohmah, Kholish, & Galib, 2022). The existence of this doctrine restricts other states from having legitimate grounds for intervening in order to protect their own citizens if they are being treated arbitrarily. However, in the early development of international law, certain violations of human values, such as the eradication of slavery, have been eliminated. Unlike the previous doctrine, contemporary international law places individuals as its subjects. Individuals are recognized as holders of rights that are internationally guaranteed solely based on their individuality, rather than their nationality or affiliation with a particular state. In contrast, states in this new legal framework are placed as holders of obligations (duty-holders).

The adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948 established human rights as the official interpretation of the United Nations Charter. The UDHR provides a detailed account of various rights recognized as human rights and serves as

a “common standard of achievement” formulated in the form of a declaration, rather than a binding treaty that requires signing and ratification. However, this declaration has become a significant step in the internationalization process of human rights. Over time, the legal status of this declaration has gained strong recognition in many countries that have ratified it. Consequently, with the existence of this declaration, human rights violations are considered violations of international law.

Under the jurisdiction of the International Criminal Court, as stated in Article 5 of the Rome Statute, serious violations of human rights include the crimes of genocide, crimes against humanity, war crimes, and acts of military aggression (Konferensi Diplomatik Perserikatan Bangsa-Bangsa, 1998, p. 4). Other articles in the Statute further elaborate on these four categories. However, the situation in Myanmar involves multiple layers of violations, with almost all aspects falling into the category of serious human rights violations, including genocide and crimes against humanity. As a result, the issue of the humanitarian conflict in Myanmar has gained international attention, particularly within the United Nations (UN) as a global forum.

VIOLATIONS OF HUMAN RIGHTS IN THE HUMANITARIAN CONFLICT IN MYANMAR

The facts on the ground regarding the violence inflicted upon the Rohingya ethnic group are committed by the Myanmar military. The Myanmar military has been involved in a series of serious human rights violations. This is based on the issue of the uncertain ethnic identity of the Rohingya, leading the Myanmar government to deliberately implement military policies to expel and commit genocide against the Rohingya ethnic group (Sundari, Prayuda, and Venita Sary (Sundari, Prayuda, & Venita Sary, 2021, p. 180). This is not a new plan, as the eradication plan against the Rohingya ethnic group has been contemplated for a long time.

Since 1948, the military junta has conducted various military operations to exterminate the Rohingya ethnic group from Myanmar. In carrying out these operations, the Myanmar government has utilized several mechanisms, including:(Dewi & Najica, 2022, p. 54)

1. Extra-judicial killings, where since 1989, thousands of teenagers and students from madrasas have been massacred.
2. Arbitrary arrests and extortion, carried out as daily tasks by Na-Sa-Ka and the police, popularly known as Kalar Hmu.
3. Confiscation of properties, including the seizure of lands and cattle from residents, which are then distributed to “model villages” in Burma inhabited by the Buddhist majority. There are 100 model

villages, each consisting of 70-100 households. Each household is given 4 hectares of land and two pairs of cattle.

4. Anti-Rohingya and anti-Muslim propaganda, conducted by the military junta through inciting the local communities by distributing books or videos that defame Islam and Muslims.
5. Rape, which occurs everywhere as an official strategy to terrorize and force the Rohingya people to flee.
6. Forced labor, which is common throughout Myanmar but only applies to Rohingya in Northern Rakhine.
7. Restriction of movement, where Rohingya are not allowed to travel from one place to another, even within the same location.
8. Restrictions on marriage, where Rohingya require years to obtain marriage permits and even have to bribe. Unregistered marriages are considered a crime and are punishable by 4-7 years of imprisonment.
9. Restrictions on employment, where Rohingya, as non-citizens, are forced into unemployment as they are prohibited from all types of jobs.
10. Restrictions on education, with an illiteracy rate of 80% where basic and secondary education is neglected. Due to movement restrictions, Rohingya are compelled to forgo higher education.
11. Prohibition of practicing religion, including the closure and destruction of many mosques, and no permission is granted for renovating any mosque, let alone constructing new ones.

The actions carried out by the Government of Myanmar against the Rohingya ethnic group can be classified as genocide based on its elements. Genocide occurs when the actions meet criteria such as systematic mass killings, discrimination against a particular ethnic group, and the intention to eliminate a minority ethnic, religious, or specific group. Considering that these elements are present in the actions carried out by the Myanmar government against the Rohingya Muslim ethnic group, it can be concluded that these actions constitute genocide within the scope of International Criminal Law.

One of the elements of grave human rights violations is that they are widespread and systematic. The element of being widespread can be indicated by several factors, including the number of victims (not singular), the massive nature of the actions, their frequency, repetitiveness, large-scale, and collectively carried out with serious impact. The element of being systematic can be indicated by factors that demonstrate a systematic pattern of the violations.:

1. The existence of a pattern or plan regarding the methods to be employed.
2. Reflecting a particular pattern that is organized comprehensively and

utilizing consistent patterns.

3. Based on policies involving substantial public or private resources, although not formally state policies.

The systematic element, in the case of the Rohingya ethnic group, is evidenced by the pre-coordinated deployment of military forces supported by orders or statements from the leadership of the Myanmar government at that time, followed by the use of armed force resulting in fatal shootings. This fact is further supported by the recurrence of violence in Myanmar against the Rohingya ethnic group starting in 2012, resulting in killings, rape, and other violations experienced by the Rohingya ethnic group in Myanmar (Gaol, n.d., p. 6)

The conflict escalated when a militant group calling themselves the ARSA (Arakan Rohingya Salvation Army) attacked 30 military security posts in northern Rakhine State on August 25, 2017. In these attacks, the ARSA also targeted Hindu civilians, resulting in a total of more than 90 casualties. The ARSA armed Rohingya individuals with simple weapons like bamboo to assault Myanmar military security posts. In this case, the ARSA, labeling themselves as defenders of Rohingya rights, also engaged in heinous actions by killing more than 90 Hindu civilians. As a result, the conflict between the Myanmar military under the Government of Myanmar and the Rohingya militant group intensified (Lee, 2023, p. 63).

As a consequence of the Rohingya conflict in Myanmar, violations against women and children have occurred. The raids carried out by the ARSA in northern Rakhine State have proven to violate human rights, especially for women and children. This is evidenced by reports of several gruesome findings of women's bodies due to the mass assaults. In other reports, it is mentioned that women were killed inside a bus by Muslim ARSA mobs, targeting 10 Muslim women who were on a pilgrimage. They were not only killed but also raped and tortured before their deaths. From these cases, it can be observed that the ARSA mob not only violated human rights against the Myanmar military and the residents of northern Rakhine but also committed human rights violations against fellow Muslims. Women, both Muslim and non-Muslim, cannot escape the conflicts occurring in Myanmar.

HANDLING HUMANITARIAN CONFLICT IN MYANMAR FROM THE PERSPECTIVE OF INTERNATIONAL LAW

The international community has been slow to respond to the conflict in Myanmar, despite it occurring for many years. Only a few countries in the world have directly responded to the conflict in Myanmar. It was not until 2012, when the humanitarian conflict in Myanmar gained public attention, that many

civil society groups from various countries began responding to the conflict. Some countries were willing to provide shelter for Rohingya refugees, although the services provided were still inadequate. Arab countries received the largest number of Rohingya refugees, followed by other Middle Eastern countries such as the United Arab Emirates, Pakistan, and neighboring countries (Yumitro, 2017, p. 90).

International organizations started addressing this issue in the early 2000s, but the progress has not been significant. The Organization of Islamic Cooperation (OIC), for example, issued a statement on the issue of humanitarian conflict through Professor Ekmeleddin Ihsanoglu, the Secretary-General of the Organization of Islamic Cooperation. The statement emphasized the need for the Myanmar government to pay attention to the fate of the Muslim minority population in Myanmar. However, there have been no concrete and organized actions to address this issue (Yumitro 2017, 91). In addition to the OIC, other international organizations have also responded to the conflict in Myanmar, such as the International Organization for Migration (IOM), which provides assistance in upholding human rights for refugees worldwide. The IOM has eight basic tasks, including migration health, immigration and border management, migrant protection and assistance, labor migration support, migration, environment, and climate change, migrant integration and training, IOM Development Fund, and migration, sustainable development, and The 2023 plan (Salsabila & Ridwan, 2023b, p. 44).

In the humanitarian conflict in Myanmar, the IOM ensures that refugees receive protection and have their needs met. For example, when Rohingya refugees arrived in Indonesia via Aceh, the IOM and UNHCR played a significant role in diplomacy with the Indonesian government and provided facilities to the refugees. They also collaborated with the Aceh Government to mobilize Rohingya refugees in response to the spread of the COVID-19 pandemic. Similarly, the UNHCR (United Nations High Commissioner for Refugees) provides protection to Rohingya refugees fleeing Myanmar. The UNHCR also assists in coordinating between the destination countries of refugees and the Myanmar government to provide access to borders, such as Bangladesh. Both organizations work in the field of migration and immigrant protection, but their focus and mandates differ. The IOM is an intergovernmental organization focused on migration and human mobility, while the UNHCR is a UN agency responsible for protecting and providing assistance to refugees worldwide. Although they may have overlapping jurisdictions, they can work in harmony to create well-being for refugees (Faruque, 2020, p. 39).

The involvement of the UNHCR in the humanitarian conflict in Myanmar is one of the ways the UN is trying to resolve the conflict. The UN Charter states

that the UN has the authority to help protect populations from genocide (Tutkey, Lengkong, & Kasenda, 2021, p. 33), by exerting political and diplomatic pressure on the Myanmar government to stop violence against the Rohingya. Through the UN Security Council and the General Assembly, UN member states have strongly condemned the human rights violations committed by the Myanmar military against the Rohingya. They have also urged the Myanmar government to stop discrimination, rape, and killings against the Rohingya ethnic group. The UN has pushed for a long-term political solution to the Rohingya conflict, urging the Myanmar government to grant citizenship rights to the Rohingya, end ethnic discrimination, and ensure the protection of human rights for all residents in the country. The UN has also supported dialogue efforts between the Myanmar government and the Rohingya ethnic group to seek a peaceful and sustainable solution for the Rohingya community.

As of now, there is still no official decision regarding the clarity of the humanitarian conflict in Myanmar at the International Criminal Court (ICC). Since 2019, the ICC has stated that it is examining all necessary aspects to resolve this case, including diplomatic processes to facilitate dialogue between the Myanmar government and the Rohingya ethnic group. However, according to international law, the Myanmar government is suspected of violating Article 6 of the Rome Statute, which deals with genocide, as well as Article 2 of the 1948 Genocide Convention. The killings of a significant number of Rohingya people and the physical destruction inflicted on the Rohingya, either in whole or in part, can serve as evidence of these violations. Additionally, the actions of the Myanmar government can also be considered as violating Article 7 of the Rome Statute, which deals with crimes against humanity. The forced expulsion and practices of slavery against the Rohingya ethnic group are concrete examples of crimes against humanity committed by the Myanmar government (Renanda, Natasyafira, Kusuma, Reviska, & Winarti, 2022, p. 149).

RELEVANCE OF INTERNATIONAL LAW AND HUMAN RIGHTS IN THE HUMANITARIAN CONFLICT IN MYANMAR

The Myanmar government has been found guilty of committing serious crimes against the Rohingya ethnic group. The Myanmar government's actions violate international laws, such as Article 6 and Article 7 of the Rome Statute, as well as Article 2 of the 1948 Genocide Convention. This indicates that the Myanmar government fails to comply with international rules with its cruel treatment of the Rohingya ethnic group. The Myanmar government has also restricted the rights that should be held by the Rohingya people, demonstrating its violation of international rules on human rights as stated in the Universal Declaration of Human Rights (UDHR).

The denial of citizenship to the Rohingya people has resulted in discrimination and human rights violations, leading to a massive wave of displacement from Rakhine state to several neighboring countries, including Bangladesh, Thailand, Malaysia, and Indonesia. These large-scale displacements have significant impacts on the destination countries, economically, socially, and culturally. The implications of the displacements can be felt in several aspects. Economically, the destination countries have to bear the burden of providing humanitarian assistance, temporary shelter, and basic needs for Rohingya refugees. This can put pressure on the economic resources of these countries (Budaya, 2017, p. 107).

In the social context, the large influx of refugees also affects the demographic structure and intercommunity interactions in the destination countries. Social and cultural integration between the refugees and the local communities can present complex challenges. Additionally, displacement can lead to social conflicts, increased tensions, and potential vulnerability to exploitation or human trafficking. In terms of culture, the massive displacement can also bring about changes in cultural identity and diversity in the host countries. The cultural influence of the Rohingya can impact the development of local culture and pose challenges in preserving distinct cultural heritage.

Efforts to enhance human rights protection in Myanmar involve ensuring fair and comprehensive legal certainty for human rights violations. The Myanmar government needs to take decisive actions to enforce human rights violations and undertake legal and policy reforms that can contribute to peace. The Myanmar government should also provide humanitarian access to international organizations and humanitarian bodies from the UN to provide protection for the Rohingya ethnic group. Allowing ample space for interethnic dialogue also contributes to the recovery from this humanitarian conflict. However, international observers note that the post-coup efforts in 2021 by the Myanmar military have had adverse effects on the judicial system in Myanmar. Currently, there are significant challenges in achieving fair justice regarding the frequent occurrence of torture and ill-treatment, where the right to justice is often neglected. ("Sistem Peradilan Myanmar Pasca Kudeta | Mahkamah Konstitusi Republik Indonesia," n.d.) Hence, legal and policy reforms, as well as the judicial system in Myanmar, are necessary.

CONCLUSION

This article has highlighted the importance of viewing the humanitarian conflict in Myanmar through the lens of international law and human rights. The conflict has caused extensive suffering and serious human rights violations, calling for responses in line with applicable principles of international law.

Through normative legal research methods employing legislative approaches, case approaches, and analytical approaches, this article has explored relevant international legal frameworks, including conventions, declarations, and other legal instruments that provide a foundation for protecting human rights and preventing serious crimes such as genocide and crimes against humanity.

Analysis of specific cases in Myanmar has revealed systematic and widespread human rights violations, including sexual violence, mass killings, and forced displacement. The international legal response to this conflict has also been examined, including efforts through the UN and international legal institutions to prosecute perpetrators of human rights violations. The importance of protecting and enforcing human rights in the context of the humanitarian conflict in Myanmar has been emphasized. States and international actors need to collaborate to ensure accountability for perpetrators of human rights violations, strengthen human rights protection mechanisms, and provide adequate humanitarian assistance to conflict victims.

This article aims to contribute to expanding understanding of the importance of international law and human rights in addressing the humanitarian conflict in Myanmar. Only through strong global engagement and cooperation in upholding humanitarian principles can we strive to achieve justice, peace, and respect for the dignity of every individual in Myanmar and around the world.

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Salsabila, N., & Ridwan, W. (2023a). Peran International Organization for Mitigation (IOM) dalam Menangani Krisis Kemanusiaan Etnis Rohingya di Indonesia rasa intoleransi antarsesama. Perbedaan etnis merupakan bentuk identitas yang melekat pada kelompok tersebut dari wilayahnya hingga kelompok minoritas mencari tempat pengungsian di negara lain. Etnis Rohingya menjadi salah satu contoh diskriminasi etnis yang dilakukan perlindungan dan kebutuhan khusus mengenai masalah pengungsi. Tujuan dari penelitian ini bantuan kemanusiaan pada etnis Rohingya. Penelitian ini menggunakan metode kualitatif Kata Kunci. 4(1). <https://doi.org/10.24853/independen.4.1.40->

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