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International Legal Protection for the Rohingya Ethnic Group: A Human Rights Approach

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Abstract

The refugee crisis is a complex issue currently facing the global community. Generally, displacement occurs as a result of oppression and human rights violations experienced by refugees in their countries of origin. One of the most prominent cases is the human rights violations against the Rohingya ethnic group in Myanmar, which has attracted serious attention from the international community. The Myanmar government is deemed to have failed to provide justice for the Rohingya people living in the Rakhine region, thereby causing a protracted humanitarian crisis. The discriminatory actions and violence perpetrated against this ethnic group clearly contravene the fundamental principles of international law. The Rohingya refugee crisis has become one of the greatest humanitarian challenges in the Southeast Asian region, including in Indonesia.

KEYWORDS *International Law, Rohingya Refugees, Human Rights*

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Introduction

Across the globe, there are many ethnic minority and majority groups, differing in terms of language, culture, race, physical appearance and so on. However, the term 'ethnic minority' is used to describe a group defined by distinctive national, tribal, religious or linguistic characteristics, whose numbers are relatively small compared to the rest of the population within a given community or nation.[1] Ethnic minorities are often treated poorly by the societies in which they live; they frequently face minor issues that infringe upon their rights—both social and individual.[2] Human rights violations within a state constitute wrongful treatment, both internationally and nationally, perpetrated by that state.

These violations have drawn international criticism and calls for accountability. These human rights violations include the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Over time, in one country in particular, namely Myanmar, the type of conflict experienced by this ethnic group has been characterised by discriminatory treatment due to differences in religion and ethnicity. Myanmar itself does not recognise the existence of the Rohingya ethnic group, and they do not hold Myanmar citizenship.[3] This is evident from legislation issued by the Myanmar government (the Burma Citizenship Law 1982), which excludes the Rohingya from the eight main ethnic groups—namely the Burmans, Kachin, Karen, Karenni, Chin, Mon, Arakan, and Shan—and from the 135 other ethnic groups.

At an international forum, the President of Myanmar justified the expulsion of this ethnic group by stating, *"The Rohingya are not our people, and we have no duty to protect them*". This statement has, of course, had a devastating impact on the Rohingya people and has drawn the attention of other nations. This is not the first time in history that this ethnic group has faced discrimination. These human rights violations occurred as early as 1962 under

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1 Jurnal Politik et al., "Analisis Penanganan Pengungsi Di Indonesia Dari Perspektif Hukum Internasional: (Ditinjau Menurut Konvensi 1951 Dan Protokol 1967)," *As-Siyadah* 6, no. 1 (February 24, 2026): 144–63, https://doi.org/10.22373/AS-SIYADAH.V6I1.8360.

2 Nevenka Đurić, Sunčana Roksandić Vidlička, and Gleb Bogush, "Legal Protection of Sexual Minorities in International Criminal Law," *Russian Law Journal* 6, no. 1 (2018), https://doi.org/10.17589/2309-8678-2018-6-1-28-57.

3 Catherine Renshaw, "The Numbers Game: Substantiality and the Definition of Genocide," *Journal of Genocide Research* 25, no. 2 (2023), https://doi.org/10.1080/14623528.2021.2003990.

the administration of President U Nay Win, who orchestrated operations that led to the expulsion of this ethnic group.[4]

To date, discrimination reached a peak in June 2012, when several members of the Rakhine ethnic group attacked a bus and killed 10 Muslims there. This violence began following allegations that three men from the Rohingya ethnic group had raped and murdered a woman from the Rakhine community.[5] The violence spread, resulting in hundreds of Rohingya casualties, thousands of homes set alight, and hundreds of people being arrested and detained. The conflict has intensified and is being allowed to continue, resulting in the Rohingya being driven out of Myanmar.[6] The discrimination and violence suffered by this ethnic group constitute a serious violation of human rights, which has a detrimental impact on the people of Myanmar and affects other nations as well. This issue of human rights violations is not easy to resolve; it requires discussion in international forums to bring an end to this conflict.

In this regard, it should be noted that the issues faced by the Rohingya people are complex, as Myanmar is reluctant to recognise them as its citizens, resulting in their loss of citizenship.[7] Consequently, this statelessness leaves them vulnerable to human rights violations and makes it difficult for them to obtain permanent legal protection. The discrimination suffered by the Rohingya ethnic group requires the involvement of international actors, namely the United Nations (UN), which, through official bodies such as the UNHCR, has sought to provide humanitarian aid to protect this ethnic group and ensure they receive legal protection.[8] The International Criminal Court has also investigated the discrimination perpetrated by the State of Myanmar, whilst ASEAN member states also play a vital role in demonstrating mutual humanitarian concern.[9]

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4 Archana Parashar and Jobair Alam, "The National Laws of Myanmar: Making of Statelessness for the Rohingya," *International Migration* 57, no. 1 (2019), https://doi.org/10.1111/imig.12532.

5 Yordan Gunawan, Carissa Shifa Novendra, and Aldha Febrila, "Indonesia's Responsibility Towards Rohingya Refugees: Analysis of the 1951 Refugee Convention," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024), https://doi.org/10.22219/ljih.v32i2.32164.

6 Aryuni Yuliantiningsih, "PERLINDUNGAN PENGUNGSI DALAM PERSPEKTIF HUKUM INTERNASIONAL DAN HUKUM ISLAM (Studi Terhadap Kasus Manusia Perahu Rohingya)," *Jurnal Dinamika Hukum* Vol. 13, no. No. 1 (2020).

7 Mohammad Sabuj, "The Right to Citizenship of Rohingya Children of Bangladeshi Descent Under International Human Rights Law," *Statute Law Review* 45, no. 1 (2024), https://doi.org/10.1093/slr/hmae011.

8 Armand Etong and Brice, "THE PRINCIPLE OF SUPREMACY OF THE CONSTITUTION AND CHALLENGES OF FUNDAMENTAL FREEDOMS IN THE MALAYSIAN FEDERAL CONSTITUTION," *Constitutional Review* 2 (2021).

9 María Teresa González Hernández, "The Inclusion of Ecocide to the Rome Statute: A New Tool to Combat the Climate Crisis?," *Revista de Derecho Ambiental(Chile)* 1, no. 19 (2023), https://doi.org/10.5354/0719-4633.2023.68825.

It will be difficult to eliminate these human rights violations without cooperation from the Myanmar government, as the lack thereof renders the legal protection afforded to the Rohingya ineffective. This also affects their citizenship status, making it difficult for this ethnic group to benefit from existing international law.[10]

This study employs an empirical approach to analyse the law in the context of social reality. This approach observes legal practices in addressing the Rohingya ethnic group's case, analyses the interaction between legal norms and the social reality of refugees, and identifies the gap between legal theory and its implementation. This is a qualitative study focusing on the analysis of legal texts and documents. The data sources consist of primary and secondary data. The primary data used comprises academic journals on ethnicity and official UNHCR documents regarding the status of Rohingya refugees. Secondary data is drawn from textbooks on international law and human rights, articles from reputable media outlets on the Rohingya humanitarian crisis, and philosophical literature on citizenship. Data collection techniques involve *library research* through systematic searches of legal journal databases and analysis of government policy documents relating to refugees. The data is analysed using descriptive qualitative methods, employing legal interpretation, legal argumentation and legal reasoning.

Human Rights and The Rohingya Ethnic

Human rights under Law No. 39 of 1999 constitute a set of rights inherent to human beings as creatures of the One and Almighty God. They are a gift that must be respected, upheld and protected by the state, the law, the government and every person for the sake of honour and protection of the dignity and worth of human beings.[11] The Rohingya are an Indo-Aryan ethnic group historically settled in the Rakhine region, formerly known as Arakan, in western Myanmar.[12] They constitute one of the largest minorities in Myanmar, with a population of approximately 1.4 million before the mass expulsions of 2017. However, their

[10] Melanie O'Brien and Gerhard Hoffstaedter, "'There We Are Nothing, Here We Are Nothing!'—The Enduring Effects of the Rohingya Genocide," *Social Sciences* 9, no. 11 (2020), https://doi.org/10.3390/socsci9110209.

[11] Muhammad Azzam Alfarizi, Asto Yudho Kartiko, and Dwi Nuryani, "HANDLING OF REFUGEES AND ASYLUM SEEKERS AT IMMIGRATION DETENTION HOUSES IN INDONESIA BASED ON INTERNATIONAL REFUGE LAW PROVISIONS," *Journal of Law and Border Protection* 4, no. 1 (2022), https://doi.org/10.52617/jlbp.v3i2.284.

[12] Madeline Gleeson and Kelley Loper, "Special Issue on the Rohingya and the Andaman Sea Crisis: Six Years On," *Asia Pacific Journal on Human Rights and the Law*, 2021, https://doi.org/10.1163/15718158-22010001.

numbers have since declined as many have fled to neighbouring countries such as Bangladesh. Historically, the Rohingya consider themselves the indigenous people of the Arakan region, with a history spanning over a millennium, influenced by the cultures and heritage of various groups, including Arabs, Mughals, Portuguese, Bengalis, as well as local tribes such as the Rakhine and Chin. Some historians also suggest that they are descendants of Arab settlers who arrived in Arakan as early as the 7th century AD.[13]

The term "Rohingya" itself derives from the ancient name of the region, "Rohan" or "Rohang", meaning "inhabitants of Rohang"—the early Muslim name for Arakan.[14] The use of this term dates back to pre-colonial and colonial times. However, the Myanmar government refuses to recognise the term "Rohingya" and regards them as immigrants from Bangladesh, labelling them as "Bengalis". This has resulted in the Rohingya not being recognised as an official ethnic group in Myanmar and losing their citizenship following the implementation of the 1982 Burma Citizenship Law. Culturally, the Rohingya possess a distinct language, traditions and identity that set them apart from other ethnic groups in both Myanmar and Bangladesh. However, there are cultural similarities with the people of Bangladesh due to a long history of migration and interaction.[15]

Genocide means any act committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as:

1) Killing a member of the group
2) Causing serious physical or mental harm to a member of the group
3) Deliberately creating living conditions for a group that are expected to result in its total or partial physical destruction
4) Taking action intended to prevent births within the group
5) Forcibly transferring children from one group to another

This definition is set out in *Article 6 of the* 1998 *Rome Statute of the International Criminal Court*, which deals with the crime of genocide. Crimes against humanity, meanwhile, are acts committed as part of a widespread and systematic attack against a civilian population, including murder, torture and

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[13] Yulio Iqbal Cahyo Arsetyo, "History of International Refugee Immigration Law in Indonesia," *Jurnal Penelitian Serambi Hukum* 17, no. 01 (2024).

[14] Elen Anedya Frahma, "International Humanitarian Law Study of the Protection of the Rohingya Community in Indonesia," *Jurnal Tana Mana* 5, no. 2 (2024), https://doi.org/10.33648/jtm.v5i2.479.

[15] Anita Dee Kaney and Azlinda Azman, "PERSPECTIVES OF ROHINGYA ON THE POSITIVE AND NEGATIVE ASPECTS OF LIFE IN MALAYSIA," *Kajian Malaysia* 43, no. 1 (2025), https://doi.org/10.21315/km2025.43.1.6.

persecution. Discrimination refers to the unfair and discriminatory treatment of the Rohingya ethnic group, including restrictions on access to education, healthcare, and employment. Denial of citizenship refers to the Myanmar government's refusal to grant citizenship to the Rohingya ethnic group, thereby depriving them of their basic rights as citizens.[16]

The consequences of human rights violations are as follows:

1) The Rohingya ethnic group has suffered serious trauma and suffering as a result of human rights violations.
2) They have lost their homes, property and livelihoods.
3) Many Rohingya people are still living in conditions of poverty and uncertainty in refugee camps.

Overall, the Rohingya people have faced a range of serious human rights violations, including genocide, crimes against humanity, discrimination, and the deprivation of citizenship. Therefore, efforts must be made to provide protection and justice for the Rohingya people.

The Role of International Actors in Efforts to Protect the Rohingya

The role of the UN, through the AICHR as the official body responsible for addressing human rights violations in ASEAN, aligns with the objectives of the human rights bodies within the UN Human Rights Council, which protect their authority. The provisions of the AICHR do not permit direct intervention in addressing this matter. AICHR can only monitor; it can only act as an advisory team. In the case of the Rohingya ethnic group, there has been a delay in resolving this conflict because AICHR does not have the same authority as other bodies. AICHR is a relatively young body, established as a humanitarian institution, and it still requires time and space to develop and exercise its authority, as do other humanitarian bodies.[17]

The UN Commission on Human Rights has stated that states that violate agreements concerning international wrongful acts related to human rights

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[16] Jobair Alam, "The Status and Rights of the Rohingya as Refugees under International Refugee Law: Challenges for a Durable Solution," *Journal of Immigrant and Refugee Studies* 19, no. 2 (2021), https://doi.org/10.1080/15562948.2020.1746872.

[17] Deasy Silvya Sari, "INDONESIAN GOVERNMENT POLICY ON ROHINGYA REFUGEES," *Andalas Journal of International Studies (AJIS)* 7, no. 1 (2018), https://doi.org/10.25077/ajis.7.1.1-13.2018.

abuses—including those constituting gross human rights violations—are categorised as having committed international crimes. In seeking to resolve the issues faced by the Rohingya, the UN has established the principles *'Responsibility to Protect'* as a means of safeguarding human rights in the context of the conflict between the Rohingya and the Rakhine.[18]

The principle of the 'responsibility to protect' put forward by the UN is hoped to halt the brutal wave of discrimination occurring during a crisis of crime within a country, whilst also serving as a means to resolve the human rights violations taking place in Rakhine. In November 2017, the UN urged the Myanmar government to take action by issuing *a presidential statement*. Hau Do Suan stated to the UN Security Council that this statement would exert political pressure on Myanmar, whilst also helping to resolve these violations. The Myanmar government eventually adopted a strategy to improve the situation by establishing a Memorandum of Understanding (MoU) between Myanmar and Bangladesh regarding the return of Rohingya refugees. The UN Security Council urged the Myanmar government to repatriate Rohingya refugees safely and with dignity.

A. The role of the International Court of Justice in efforts to protect the Rohingya people

The ICC is a permanent international judicial body with the authority to exercise jurisdiction over individuals and legal entities suspected of committing serious crimes reported by the public. This institution serves as a forum for complaints required by the international community and is known as *'The Missing Link in the International Legal System*'. Within its remit, this court has mechanisms to carry out humanitarian efforts in accordance with its jurisdiction. The ICC may exercise its authority over a case if a state has jurisdiction over that case. In the case of the Rohingya ethnic group, the ICC cannot exercise its authority due to certain obstacles, including the fact that cases occurring in that country are investigated by the state concerned, unless that state is unable or unwilling to address the matter.[19]

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[18] Alam, "The Status and Rights of the Rohingya as Refugees under International Refugee Law: Challenges for a Durable Solution."

[19] Chairul Fahmi, "THE DUTCH COLONIAL ECONOMIC'S POLICY ON NATIVES LAND PROPERTY OF INDONESIA," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 5, no. 2 (2020), https://doi.org/10.22373/petita.v5i2.99.

This is in accordance with Article 13(a), which governs the referral of a case by a State Party. Under this provision, the ICC requires cooperation between member states to resolve this case. In other words, if a state implicated in an international crime or offence is unwilling or unable to bring the matter to a resolution, the ICC will take over the proceedings. The ongoing discrimination by the Myanmar government against the Rohingya ethnic group is a clear indication that Myanmar is reluctant to take steps to resolve the issues affecting the Rohingya.[20] The ICC's role in resolving this case of gross human rights violations should enable it to swiftly conclude the case through the UN Security Council's decision-making mechanism; it should be noted that Myanmar is not a state party to the Statute. It appears that the Myanmar government is delaying the resolution of this case because, in their view, this ethnic group is not part of Myanmar's permanent population. The judicial system in Myanmar is unable to function effectively in resolving the Rohingya issue or in prosecuting those responsible for human rights violations. This reflects the fact that the state of Myanmar is incapable of handling this matter.[21]

B. The role of ASEAN member states in efforts to protect the Rohingya people

As a regional organisation in Southeast Asia, ASEAN is committed to ending the conflict that has led to the humanitarian crisis affecting the Rohingya people. The establishment of ASEAN was based on the premise that there would be no conflict between its member states. All ASEAN members must respect the sovereignty and territorial integrity of each nation.[22] Every ASEAN member state has the right to protect its existence from interference, subversion and violence from external attacks. Furthermore, no ASEAN member state may interfere in the internal affairs of another member state. The obstacle faced by ASEAN member states is that Myanmar is reluctant to be open with its Southeast Asian

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[20] Yulia Rina Wijaya, "Building Peaceful Coexistence Between Rohingya Refugees And Buffer Com- Munities In Langsa City And East Aceh," *Journal of Islamic Law Studies* 1, no. 3 (2018).

[21] Patrick Vernon, "Queering Genocide as a Performance of Heterosexuality," *Millennium: Journal of International Studies* 49, no. 2 (2021), https://doi.org/10.1177/03058298211033339.

[22] Chairussani Abbas Sopamena and Universitas Jenderal Achmad Yani, "PENGUNGSI ROHINGYA DAN POTENSI KONFLIK & KEMAJEMUKAN HORIZONTAL DI ACEH," *Caraka Prabu : Jurnal Ilmu Pemerintahan* 7, no. 2 (December 28, 2023): 85–115, https://doi.org/10.36859/JCP.V7I2.1927.

neighbours regarding the issues it is currently facing. Consequently, this makes it difficult for other nations to engage with Myanmar to resolve the Rohingya crisis. Moreover, ASEAN adheres to the principle of non-intervention, meaning that member states cannot interfere in the affairs of other nations.[23]

Based on this principle, the integrity of ASEAN member states is increasingly being undermined, thereby hindering the consolidation of Southeast Asian nations. Yet ASEAN members' involvement in resolving this conflict demonstrates ASEAN's concern for its member states.

C. The role of non-governmental organisations in efforts to protect the Rohingya ethnic group

The human rights violations committed by the Myanmar government have drawn sympathy from other nations and prompted a response from the international community—including the UN, the OIC, ASEAN and non-governmental organisations—which have begun to urge the Myanmar government to cease its discrimination against human rights. Indonesia is one of the countries that ought to provide humanitarian aid to uphold human rights and achieve justice.[24] To date, Rohingya refugees remain under the monitoring and supervision of international organisations and non-governmental organisations, which are constantly striving to assist them. In contrast, Thailand has issued regulations prohibiting ships carrying Rohingya refugees from entering its territory. Furthermore, Bangladesh has banned international charities from entering the country to assist Rohingya refugees residing there.

The Effectiveness of International Legal Instruments

International law, through instruments such as the 1948 Genocide Convention, international humanitarian law and international criminal law, has recognised and affirmed the need to protect the Rohingya people, who are facing

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[23] Jurnal Politik et al., "Analisis Penanganan Pengungsi Di Indonesia Dari Perspektif Hukum Internasional: (Ditinjau Menurut Konvensi 1951 Dan Protokol 1967)," *As-Siyadah* 6, no. 1 (February 24, 2026), https://doi.org/10.22373/AS-SIYADAH.V6I1.8360.

[24] European Parliament, "Resolution 2013/2669(RSP) of 13 June 2013 on the Situation of Rohingya Muslims" (European Parliament, Strasbourg, 2013).

genocide and grave human rights violations in Myanmar.[25] In 2020, the International Court of Justice (ICJ) issued a ruling obliging Myanmar to take emergency measures to protect the Rohingya from genocide, whilst the International Criminal Court (ICC) opened a formal investigation into crimes against humanity, specifically forced deportation and other inhumane acts. Despite international recognition of the violations suffered by the Rohingya, the implementation of the ICJ ruling and other legal measures continues to face significant obstacles. Myanmar has rejected the ICJ's decision and is reluctant to cooperate, thereby hindering the enforcement of the law and effective protection for the Rohingya. Furthermore, as Myanmar is not a party to the Rome Statute, the ICC has limited direct jurisdiction over the country.[26] However, it may utilise the principle of extraterritorial effect through Bangladesh, a state party.

The case of crimes against humanity committed against *stateless persons of* the Rohingya ethnic group in Myanmar gives rise to an *overlap* of jurisdiction between the International Court of Justice (ICJ) and the International Criminal Court (ICC); this overlap can be explained as follows:

1) The case of the stateless Rohingya people in Myanmar constitutes an international crime, namely a crime against humanity. Both the ICJ and the ICC have jurisdiction to handle cases of international crimes.
2) Myanmar, as the state where these crimes occurred, is not subject to the jurisdiction of the International Criminal Court (ICC), as it has not ratified the Rome Statute, which forms the basis of the ICC's jurisdiction. However, as a member state of the United Nations, Myanmar is subject to the jurisdiction of the ICJ as one of the UN's key organs.

The enforcement of international law is also hampered by the principle of state sovereignty and the Myanmar government's lack of good faith in resolving these human rights violations. Resolution mechanisms through the UN and ASEAN have also been only partially effective, with ASEAN facing challenges in intervening due to the principle of non-intervention, and the UN grappling with global political dynamics that hinder effective sanctions and the enforcement of justice. As a result of these limitations, many Rohingya people continue to face systematic discrimination and loss of citizenship. They are forced to flee without clear legal protection in their destination countries. International confidence in

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[25] Gunawan, Novendra, and Febrila, "Indonesia's Responsibility Towards Rohingya Refugees: Analysis of the 1951 Refugee Convention."

[26] Chairul Fahmi, "Derita Hidup Rohingya ," Serambi Indonesia, February 2, 2023, https://aceh.tribunnews.com/2023/02/01/derita-hidup-rohingya.

the UN's and international law's ability to deliver justice has diminished due to the failure to uphold justice in this case effectively.[27]

A. The Principle of Non-Refoulement

The principle of *non-refoulement* prohibits a state from returning refugees or asylum seekers to a territory where they would face persecution or life-threatening mistreatment on grounds of race, religion, nationality, membership of a particular social group, or political opinion. This principle is essentially an implementation of the protection of human rights, particularly the prohibition of torture and cruel treatment or punishment. Within the legal framework for the protection of refugees and asylum seekers, the principle of non-refoulement is a fundamental concept and the backbone of the international refugee law system.[28]

The 1951 Convention Relating to the Status of Refugees defines the status, rights and obligations of refugees, encompassing fundamental principles such as non-discrimination on the grounds of race, religion or country of origin; the prohibition of expulsion; the prohibition of forced return (non-refoulement); and the prohibition of punishment. Furthermore, this convention also guarantees refugees' right to access basic education, employment, assistance, and social security. Indonesia is one of the countries that has yet to ratify the 1951 Convention and the 1967 Protocol, as the government feels unprepared for the consequences of their implementation, particularly regarding the fulfilment of refugees' basic rights, which is expected to place an additional burden on the state budget.[29] Nevertheless, Indonesia enacted Presidential Regulation No. 125 of 2016 on the Management of Foreign Refugees on 31 December 2016. As Indonesia has not ratified the 1951 Convention and the 1967 Protocol, which include a prohibition on the expulsion and return of refugees (*non-refoulement*), some members of the public who oppose the arrival of Rohingya refugees believe that Indonesia is under no obligation to provide them with protection within its territory.[30]

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[27] Dian Wahyu Utami, Rahmat Saleh, and Irin Oktafiani, "Indonesia's Constitutional Immigration Policy: A Case of Rohingya Ethnic Group Refugees," *Journal of Indonesian Social Sciences and Humanities* 8, no. 2 (2018), https://doi.org/10.14203/jissh.v8i2.84.

[28] Yuliantiningsih, "PERLINDUNGAN PENGUNGSI DALAM PERSPEKTIF HUKUM INTERNASIONAL DAN HUKUM ISLAM (Studi Terhadap Kasus Manusia Perahu Rohingya)."

[29] Bangkim Biswas et al., "How Does the Rohingya Influx Influence the Residential Satisfaction and Mobility Intentions of the Host Communities in Bangladesh?," *Journal of International Migration and Integration* 23, no. 3 (2022), https://doi.org/10.1007/s12134-021-00886-2.

[30] M. Yakub Aiyub Kadir et al., "The Interplay of Human Trafficking and the Rohingya Refugee Crisis in Aceh Province, Indonesia: Exploring the Complexities of Criminality and

One of the main reasons why Indonesia has not yet ratified the 1951 Refugee Convention is that some of its provisions are considered burdensome. The Convention imposes an obligation on signatory states to guarantee the rights of refugees. Article 17, which grants refugees the right to work, and Article 21, which grants the right to housing, are of particular concern. Article 17 is considered difficult to implement in Indonesia due to high unemployment rates and low per capita income. The relevant text of Article 17 reads: *"The contracting state shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."*

That article obliges the States Parties to the Convention to employ refugees. However, this is regarded as a heavy burden for the Indonesian Government. As a developing country with high unemployment and a still low per capita income, Indonesia will find it difficult to fulfil this obligation. Furthermore, Article 21 states*: "As regards housing, the Contracting States, in so far as laws or regulations regulate the matter or are subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances".*

Article 21, which governs the provision of accommodation for refugees, is also regarded as a heavy burden for the Indonesian Government. Indeed, in the Indonesian context, these obligations can conflict with the interests of local communities. According to Damos, the implementation of these international obligations could clash with Indonesian society. This is a cause for concern because if Indonesia is unable to fulfil these obligations, the country could be deemed a failure as a refugee-hosting nation. Damos also highlighted the potential negative consequences should Indonesia rush to ratify the convention. In his view, the social and political implications of this policy could affect the security sector. On the other hand, the Indonesian Government is currently striving to reduce poverty and unemployment levels in the country. These efforts reflect the complexity of the situation Indonesia faces in addressing the refugee issue, in which policies must align with existing social, political, and economic conditions. Although Indonesia has not ratified the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, these principles have been recognised as part of customary international law and thus remain binding even in the absence of ratification. In practice in Indonesia, the principle *of non-*

Humanitarian Concerns," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024), https://doi.org/10.29303/ius.v12i1.1355.

refoulement is reflected in how the country handles refugees from various conflict-affected nations, such as the Rohingya from Myanmar. Although Indonesia does not have comprehensive refugee-status regulations akin to those of states that have ratified the Refugee Convention, the country nevertheless recognises a humanitarian obligation to provide temporary protection to refugees arriving on its territory. Presidential Regulation No. 125 of 2016 on the handling of refugees from abroad is one of the legal instruments demonstrating the government's commitment to managing refugee issues, including the avoidance of *refoulement*.[31]

The Rohingya people have been victims of various human rights violations, some of which have even been classified as acts of genocide, particularly since 1978. Strict restrictions on their freedom of movement and their unrecognised citizenship status in Myanmar have exacerbated their plight. Furthermore, Rohingya Muslims have faced expulsion, killings and the burning of their homes, resulting in numerous casualties, including children and women. Although the Presidential Regulation does not specifically mention *non-refoulement*, its application is evident in various policies that prevent the forced return of refugees to countries of origin where their safety is at risk. An example is the handling of Rohingya refugees, where Indonesia has accepted thousands of people fleeing violence in Myanmar; despite various social and economic difficulties, Indonesia has repeatedly demonstrated its commitment to the principle *of non-refoulement* through its humanitarian actions.[32]

The principle of non-refoulement is not absolute; Article 33 of the 1951 Geneva Convention recognises exceptions in exceptional circumstances, taking into account human rights and justice. Exceptions apply if the presence of refugees threatens the national security or public order of the host country. The increase in the number of refugees in Indonesia risks giving rise to human smuggling, human trafficking and other criminal activities. However, the people of Aceh are also disillusioned by the fact that Rohingya refugees often commit crimes, such as causing disturbances and breaching refugee regulations. They are also disillusioned when refugees flee to Malaysia after receiving care and assistance. The people of Aceh are only willing to provide temporary, short-term shelter and reject the arrival of Rohingya refugees in the long term.

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[31] Alfarizi, Kartiko, and Nuryani, "HANDLING OF REFUGEES AND ASYLUM SEEKERS AT IMMIGRATION DETENTION HOUSES IN INDONESIA BASED ON INTERNATIONAL REFUGE LAW PROVISIONS."

[32] Edward Panjaitan et al., "TINJAUAN YURIDIS PENEGAKAN HUKUM DI LAUT TERHADAP PENGUNGSI ROHINGYA DI INDONESIA," *Honeste Vivere* 35, no. 1 (2025), https://doi.org/10.55809/hv.v35i1.427.

B. Citizenship and Legal Status of the Rohingya

Burma officially became part of the British Empire on 1 January 1886. Subsequently, from early 1942 until May 1945, Burma was occupied by Japan, before finally gaining its independence on 4 January 1948. However, the Rohingya ethnic group has not been recognised as citizens since the enactment of the Aliens Act of 1864 up to the Burmese Citizenship Act of 1982. Indeed, in the 1948 Union Citizenship Act drafted by the British government, the Rohingya were not recognised as citizens of Myanmar. According to the Burmese Rohingya Organisation UK (BROUK), the Myanmar government has continued to implement policies that oppress the Rohingya ethnic group since the 1970s.[33]

Pressure on the Rohingya population gradually increased following the reforms introduced by President Thein Sein in 2011. In June and October 2012, conflicts broke out in the Rakhine or Arakan region, with the Rohingya community becoming the target of violence. According to the Myanmar government's official account, the conflict was triggered by the robbery and murder of a Buddhist woman in Yanbye and the killing of ten Muslims on a bus in Taungup on 28 May and 3 June 2012. This was also confirmed by Lindblom, who stated that the escalation of tensions in Rakhine in 2012 was triggered by the death of Thida Htwe, a 27-year-old woman, following a robbery, rape and murder committed by three Muslim men in the Ramri area. The atmosphere became increasingly tense after local activists produced and distributed leaflets detailing the chronology of the crimes committed against Thida Htwe, as well as the uploading of photos of Thida Htwe's body to the internet.[34]

An in-depth analysis of the Rohingya's citizenship status reveals complexities involving legal and policy aspects, as well as substantial global challenges. The uncertainty surrounding their citizenship status and discriminatory policies has led to an identity crisis, marginalisation and human rights violations experienced by the Rohingya people. There is an urgent need for policy reform at both national and international levels to ensure the recognition and protection of the Rohingya's citizenship rights, whilst emphasising the need for more intensive global engagement in addressing the root causes and the far-reaching implications for regional peace and stability.

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[33] Hassan Al Imran, "The Plight of Boat Refugees to Thailand," *International Journal on Minority and Group Rights* 29, no. 5 (2022), https://doi.org/10.1163/15718115-bja10081.

[34] Antje Missbach and Gerhard Hoffstaedter, "Deadly Sea Passages: Navigating Risks and Uncertainties Aboard Rohingya Refugee Boats," *Journal of Ethnic and Migration Studies*, 2025, https://doi.org/10.1080/1369183X.2025.2578388.

Conclusion

The Rohingya are an Indo-Aryan ethnic group inhabiting the Rakhine region, formerly known as Arakan, in western Myanmar. As one of the largest minorities in Myanmar, their population before the mass expulsions of 2017 was estimated at 1.4 million, though this figure has fallen sharply due to the mass exodus to neighbouring countries such as Bangladesh. Historically, the Rohingya people have regarded themselves as the indigenous inhabitants of the Arakan region. The term 'Rohingya' itself derives from the ancient name of the region, 'Rohan' or 'Rohang', meaning 'people of Rohang', an early Muslim name for Arakan. The use of this term dates back to pre-colonial and colonial times. However, the Myanmar government refuses to recognise the term "Rohingya" and regards them as immigrants from Bangladesh, even labelling them as "Bengalis". This refusal has resulted in the Rohingya not being recognised as an official ethnic group in Myanmar and losing their citizenship following the enactment of the 1982 Burmese Citizenship Law.

International law holds great potential to protect the Rohingya people through various legal instruments and international judicial bodies. However, its effectiveness remains limited by political constraints, state sovereignty and a lack of cooperation from Myanmar. Therefore, structural reforms and the strengthening of international legal mechanisms, including enhancing the role of the UN and ASEAN in law enforcement and the protection of human rights, are essential to ensure that protection for the Rohingya people becomes more effective and responsive to crimes of genocide and other human rights violations. Consequently, the effectiveness of international law in the current Rohingya case remains limited. It requires greater efforts from the international community to overcome the various existing obstacles and ensure tangible human rights protection for the Rohingya ethnic group.

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