

# THE PLIGHT OF ROHINGYA MUSLIMS: THE PROTECTION OF WORLD'S MOST PERSECUTED MINORITIES UNDER INTERNATIONAL LAW

Alia Yofira Karunian  
Ida Bagus Wyasa Putra  
Specialization Program of International Law and International Business Law  
Faculty of Law Udayana University

## ABSTRAK

*Tulisan ini membahas mengenai krisis kemanusiaan Muslim Rohingya, sebuah kelompok minoritas yang mengalami pelanggaran hak asasi manusia di Negara mereka sendiri, Myanmar. Kedatangan Muslim Rohingya secara massal telah mengalami penolakan bahkan dari Negara mayoritas Muslim seperti Malaysia, Indonesia dan Bangladesh yang mengklaim 'ketakutan terhadap kedatangan Muslim Rohingya yang tidak dapat terkontrol' sebagai alasan pembenar mereka. Tulisan ini mengaplikasikan metode penelitian normatif dipadukan dengan pendekatan perbandingan, perundang-undangan, kasus, dan analisis konsep hukum. Kesimpulannya, masyarakat internasional dapat menuntut tanggung jawab dari Myanmar atas krisis Muslim Rohingya, yang diakibatkan atas tindakan Myanmar yang salah berdasarkan hukum internasional.*

***Kata Kunci: Muslim Rohingya, Hak Asasi Manusia, Perlindungan Pengungsi, Tanggung Jawab Negara***

## ABSTRACT

This writing discusses the Rohingya Muslims humanitarian crisis, a minorities group which faced abuse of human rights in their own country, Burma. The mass-influx of the Rohingya Muslims to Asia countries have faced rejection even from the Muslim-majority countries such as Malaysia, Indonesia and Bangladesh which claim 'fear of uncontrolled influx of the Rohingya Muslim' as their justification. This writing applies normative legal research combined with comparative, statutory, case, analytical and conceptual approaches. In conclusion, international community may invoke the responsibility of Burma to be held responsible for the Rohingya Muslims crisis, as the result of Burma's wrongful conduct under international law.

**Keywords: Rohingya Muslim, Human Rights, Protection of Refugee, Responsibility of State**

## I. INTRODUCTION

### 1.1 Background

The mass-influx of persons across international borders seems worsening nowadays. Those people are what international law calls refugees: people fleeing

persecution in their home countries.<sup>1</sup> The Rohingya Muslim [“The Rohingya”] is a minorities group resided in predominantly Buddhist country, Burma. The Burmese Government did not acknowledge the Rohingya as their nationals, it referred them as “Bengali Migrants”.<sup>2</sup>

It was all started in 2012, when religious and ethnic tensions between the Rohingya and the Rakhine Buddhists escalated into widespread and deadly rioting.<sup>3</sup> The Rohingyas are forced to leave their homes ever since. Unfortunately, the mass-influx of the Rohingya Muslims to Asia countries have faced rejection even from the Muslim-majority countries such as Malaysia, Indonesia and Bangladesh which claim ‘fear of uncontrolled influx of the Rohingya Muslim’ as their justification.<sup>4</sup>

## 1.2 Objective

The objective of this writing is to analyze and describe the discrimination suffered by the Rohingya and to further elaborate on how and why the international community’s *erga omnes* obligation can be invoked as the ground to protect the Rohingya.

## II. CONTENT

### 2.1 Research Method

Research method applied within this writing shall be normative legal research<sup>5</sup> combined with comparative, statutory as well as analytical and conceptual approach<sup>6</sup> using both primary as well as secondary sources which aims to examine relevant law regarding the protection of the Rohingya under international law.

---

<sup>1</sup> Joseph Blocher and Mitu Gulati, 2016, *Competing for Refugees: a Market-Based Solution to a Humanitarian Crisis*, Columbia H.R.L. Rev., p.3.

<sup>2</sup> “Asia’s Worst Refugee Crisis in Recent Years Could Happen Again”, (<http://edition.cnn.com/2016/06/19/asia/myanmar-rohingya-refugees/>), accessed on January 5<sup>th</sup> 2017, 1:43AM.

<sup>3</sup> “Who are the Rohingya Refugees”, (<https://www.amnesty.org.au/who-are-the-rohingya-refugees/>), accessed on January 5<sup>th</sup> 2017, 1:22AM.

<sup>4</sup> “Why No One Wants the Rohingyas”, (<http://www.npr.org/sections/thetwo-way/2015/05/15/407048785/why-no-one-wants-the-rohingyas>), accessed on January 6<sup>th</sup> 2017, 12:45PM.

<sup>5</sup> Soerjono Soekanto dan Sri Mamudji, 2007, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, p.12.

<sup>6</sup> Peter Mahmud Marzuki, 2009, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, p.93.

## 2.2 Result and Analysis

### 2.2.1 The Gross-violations of Rohingyas' Human Rights

The racial discrimination<sup>7</sup> suffered by the Rohingya is contrary to customary international law.<sup>8</sup> It is shown by the enactment of 1982 Burma Citizenship Law which effectively denies the possibility of Rohingya to acquire a nationality.<sup>9</sup> Moreover, the Burmese government violates the Rohingya's right to freedom of movement<sup>10</sup> by restricting them from traveling within Burma and abroad.<sup>11</sup>

Furthermore, the Burmese government violates the Rohingya right to secondary education<sup>12</sup> as it only reserves secondary education for citizens.<sup>13</sup> The local government authorities also requires the Rohingya to perform forced labor, those who refuse or complain are physically threatened, sometimes with death, and that children as young as seven years old have been seen on forced labor groups.<sup>14</sup>

### 2.2.2 The *Erga Omnes* Obligation of International Community to Protect the Rohingya's Rights by Invoking Burma's Responsibility

States shall ensure the realization<sup>15</sup> of higher standard of living and self-determination of peoples and universal respect for human rights and fundamental freedoms for all without distinction as to race or religion.<sup>16</sup> The *erga omnes* is obligation owed to the

---

<sup>7</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, 660 UNTS 195, Art.1(1); see also Malcolm N. Shaw, 2003, *International Law*, 5<sup>th</sup> ed., Cambridge University Press, p.266.

<sup>8</sup> *ibid*, p.267.

<sup>9</sup> Human Rights Watch Report, 2000, *Burma/Bangladesh: Burmese Refugees in Bangladesh: Still No Durable Solution*, Vol.12, Issue 3, (<https://www.hrw.org/reports/2000/burma/burm005-02.htm>), ["HRW Report"], accessed on January 5<sup>th</sup> 2017, 9:00PM.

<sup>10</sup> *International Covenant on Civil and Political Rights*, 1966, 999 UNTS 171, Art.12; see also *Universal Declaration on Human Rights*, 1948, UN Doc. A/810, ["UDHR"], Art.13; see also Sarah Joseph et.al., 2004, *The International Covenant on Civil and Political Rights Cases, Materials, and Commentary*, 2<sup>nd</sup> ed., Oxford University Press, p.349.

<sup>11</sup> HRW Report, *loc.cit*.

<sup>12</sup> *International Covenant on Economic, Social and Cultural Rights*, 1966, 993 UNTS 3, Art.13(b); see also UDHR, Art.26(2).

<sup>13</sup> HRW Report, *loc.cit*.

<sup>14</sup> *ibid*.

<sup>15</sup> *Charter of the United Nations*, 1945, 1 UNTS 16, ["UN Charter"], Art.56.

<sup>16</sup> *ibid*, Art.55.

international community as a whole which is derived from the violations of the basic human rights, including protection from slavery and racial discrimination.<sup>17</sup> The abuse of rights conducted by the organs of Burmese government<sup>18</sup> is attributable to Burma<sup>19</sup> and constitute breach of Burma's international obligation.<sup>20</sup> Presently, as the Rohingya suffered from the violations of human rights as the result of Burma's internationally wrongful conduct, thus, international community may invoke Burma's responsibility for the reason that the obligation breached is owed to the international community as a whole.<sup>21</sup>

### III. CONCLUSION

The Rohingyas have suffered the gross-violations of their fundamental and basic human rights such as the freedom of movement, freedom from slavery. Therefore, Burma has conducted internationally wrongful conduct which constitutes breach of its international obligation to respect the enforcement of the Rohingya's human rights. In conclusion, on the basis of its *erga omnes* obligation to protect the basic human rights, international community is obligated to bring the Rohingya Muslim humanitarian crisis to the attention of the United Nations Security Council<sup>22</sup> to investigate any situation which is likely to endanger the maintenance of international peace and security.<sup>23</sup>

### INDEX OF AUTHORITIES

#### LEGAL INSTRUMENTS

*Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, UN Doc. A/56/83.

*Charter of the United Nations*, 1945, 1 UNTS 16.

---

<sup>17</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, 1970, ICJ Reports p.3, paras.33,34.

<sup>18</sup> *supra*, Section.2.2.1.

<sup>19</sup> *Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, UN Doc. A/56/83, Art.4(1).

<sup>20</sup> *ibid*, Art.2(b).

<sup>21</sup> *ibid*, Art.48(1)(b).

<sup>22</sup> UN Charter, Art.35.

<sup>23</sup> *ibid*, Art.34.

*International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, 660 UNTS 195.

*International Covenant on Civil and Political Rights*, 1966, 999 UNTS 171.

*International Covenant on Economic, Social and Cultural Rights*, 1966, 993 UNTS 3.

*Universal Declaration of Human Rights*, 1948, UN Doc. A/810.

#### CASE LAW

*Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, 1970, ICJ Reports p.3.

#### BOOKS

Joseph, Sarah *et.al.*, 2004, *The International Covenant on Civil and Political Rights Cases, Materials, and Commentary*, 2<sup>nd</sup> ed., Oxford University Press.

Marzuki, Peter Mahmud, 2009, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta.

Shaw, Malcolm N., 2003, *International Law*, 5<sup>th</sup> ed., Cambridge University Press.

Soekanto, Soerjono dan Sri Mamudji, 2007, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta.

#### LAW REVIEW AND DIGESTS

Human Rights Watch Report, 2000, *Burma/Bangladesh: Burmese Refugees in Bangladesh: Still No Durable Solution*, Vol.12, Issue 3.

Joseph Blocher and Mitu Gulati, 2016, *Competing for Refugees: a Market-Based Solution to a Humanitarian Crisis*, Columbia H.R.L. Rev.

“Asia’s Worst Refugee Crisis in Recent Years Could Happen Again”, (<http://edition.cnn.com/2016/06/19/asia/myanmar-rohingya-refugees/>).

“Who are the Rohingya Refugees”, (<https://www.amnesty.org.au/who-are-the-rohingyarefugees/>).

“Why No One Wants the Rohingyas”, (<http://www.npr.org/sections/thetwo-way/2015/05/15/407048785/why-no-one-wants-the-rohingyas>).